

**Ministry of Justice**

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

**Consultation on proposals for reform**



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

**March 2017**

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 over 3,500 members committed to supporting the association's aims and all of which 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 MoJ's review of fees in the Employment Tribunals. While the consultation as a whole focuses on the issues surrounding fees in the employment tribunal, chapter 8 contains proposals on fee remission that the MoJ states will also "benefit people on low incomes bringing proceedings in the civil and family courts". We respond to this part of the consultation, in so far as it affects personal injury claimants.

### **Q1 Do you have any specific proposals for reforms to the Help with Fees scheme that would help to raise awareness of remissions, or make it simpler to use? Please provide details.**

We welcome the improvements that have already been made to the fee remissions system to make it more accessible and straight forward. There are, however, other improvements that could be made. We suggest that rather than requiring a person to apply for Help with Fees at each fee payment point, a person should apply once, at the beginning of the process, and then simply have to declare at each payment point whether or not their circumstances have changed since the last application. The process could be similar to that for benefit applications, whereby certain benefits are granted for a set period of time. A person could apply for an exemption before they issue their claim, and would then be under a duty to inform the Courts and Tribunals Service if any of their circumstances change. This method of granting remission will be simpler for the claimant than the current method, allowing the necessary evidence to be gathered and sent off and an exemption granted before the time limit begins ticking. This method will be especially helpful as there are moves to increasingly digitise the court process, and more claims will be issued online. If a person has a pre-authorised exemption from fees, they will be able to input the exemption code into the online issue form.

Simplification of the fee remissions system would benefit an already stretched court service. If more fee remissions were granted ahead of time, and there was no requirement to keep applying at each stage, the system would be more efficient and would require less administration from time-pressed court staff.

#### *Timing of retrospective applications*

We suggest that the time limit for retrospective fee remissions should be extended back to six months. It is important that enough time is given to applicants to apply for remissions, as defendants will refuse to pay for court fees if a remission could have been granted to the claimant but the claimant did not apply. 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 would allow claimants who are unsure or do not know to apply to do so, and get a remission to avoid being out of pocket when the defendant will not pay. The six month limit also allows for the necessary evidence to be gathered, and if mistakes are made, there is time to send the form back correctly completed.

At the very least, a telephone help line should be set up to establish early on in the process whether a person is eligible for a fee remission, to ensure that those who are eligible apply as early as possible. We appreciate that there is currently an online tool to help a person decide if they are eligible for remission, but this requires information such as national

insurance number, which a person may not have readily available if they just want to quickly check their eligibility.

If, as suggested above, fee remissions are applied for and granted in the same way as benefits, with an application made before proceedings are issued, this would also rectify issues around timing of retrospective applications.

#### *Automatic strikeout*

Recent changes to the Civil Procedure Rules, which come into force on April 6 2017, mean that if a person fails to pay their trial fee or file a completed fee remission form before the trial fee payment date, the claim will be automatically struck out. Not only, therefore, are people at risk of running out of time if they pay their fee and then try to claim a remission after the event (due to the short time limits to apply retrospectively), those who apply when proceedings are issued are now also at risk of having their entire claim struck out if they make a mistake on their remission form, or the remission is refused. The fee remissions scheme must be made simpler. We suggest, as above, that fee remissions should be valid for a set period of time rather than a person having to apply at each fee point.

#### *Defendants benefiting from claimant fee remission*

If fee remissions were applied for and granted for a set period, as suggested above, this would also be an opportunity to ensure that defendant firms do not get any undue benefit from the claimant qualifying for remission. In cases where the claimant is successful and so no longer liable to pay the court fee, their ability to pay the fee or not should no longer be a consideration. The defendant should be required to pay the court fee to HMCTS, regardless of whether the claimant qualified for fee remission or not.

#### *Wider publicity*

We also suggest that awareness of the fee remissions system should be promoted more widely – many people who will qualify for a partial remission, for example, will not currently be aware that they can apply. With civil court fees set at such high levels, many people would benefit from knowing that they can apply for a partial reduction in fees.

### **Q2 Do you agree that raising the lower gross monthly 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?**

While we welcome a rise in the lower gross monthly threshold, we disagree with the Government's decision not to increase the disposable capital test. APIL argued before the test was introduced that it would lead to vulnerable people being denied access to justice. It should be removed, or at the very least increased. We reiterate that a person who has £3,000 in savings will not wish to spend, and will most likely be unable to justify, spending up to £1,000 on a court fee. The fee remissions scheme as set out at present, penalises people who have been prudent in planning ahead and putting aside savings.

The disposable capital test means that people claiming for a personal injury may be particularly vulnerable, if their injury requires them to take time off work. During this time they may only be paid statutory sick pay - £88.45 per week. A person will need their savings to

support them, and will also not be in a position to replenish their savings with their usual full income. These factors will mean that the injured person's capital is far from "disposable", and they will face a difficult decision as to whether to pursue a claim or not. We also believe that the disposable capital test has a disproportionate effect on certain groups of people, such as the elderly. The elderly are likely to have more capital than other groups, but have little ability to replenish their funds. They will rely on their savings to pay for day to day costs. A member reports that he had a client in his 80s, with a wife in care home. Their savings went towards her care fees, but because of the couple's combined level of capital, he was not entitled to remission. The help with fees page on the government website states that a person over 61 can still apply for remission if their capital is up to £16,000. However, if that capital is all that the elderly person lives off, and they do not have the ability to replenish it, they are likely to think twice before spending a substantial portion on court fees and will be put off pursuing a claim.

If the disposable capital test is to remain, it must be made clear that compensation awards exempt from the calculation of disposable capital must include interim awards whether or not by way of court order. At paragraph 347 of the consultation document, it is said that compensation payments paid following a court order will be disregarded under the disposable capital test. It would be nonsensical for a person to have to obtain a court order in order to ring fence their interim award from the disposable capital test.

We query on what basis the Lord Chancellor decides to use the exceptional power to remit fees, and would also be grateful to know how many people apply for and are successful in obtaining a remission on this basis. We suggest that there should be greater transparency around this power.

APIL remains of the view that there must be an analysis of the impact of the benefits system before the limits for fee remissions can be set fairly. The current fee remissions system was introduced at a time when the benefits system was being overhauled and the effects of the new system unknown. As far as we are aware, there has not been a review of impact of the the benefits system since the changes, and in order to set the fee remissions threshold fairly, a review must take place.

**Q3 Do you agree with the proposal to raise the gross monthly income threshold for a fee remission from £1,085 to £1,250?**

We welcome an increase to the gross monthly income threshold. We suggest, however, that there must be greater transparency as to the definition of a "couple". It is unclear whether this includes cohabittees.