



IoD response to MoJ consultation on *Fee remissions for the courts and tribunals*

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Fees remissions for the courts and tribunals **A Response from the Institute of Directors**

Dear Rachel,

The Institute of Directors (IoD) welcomes the opportunity to respond to the consultation document *Fee remissions for the courts and tribunals* published by the Ministry of Justice in April 2013.

About the IoD

The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 36,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 80% of FTSE 100 companies and 60% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 72%, comprise directors of small and medium-sized enterprises (SMEs), ranging from long-established businesses to start-up companies.

General comments

The IoD's interest in the consultation on fees remissions relates primarily to the impact on the number of claims to employment tribunals. IoD members have strong concerns about the number of complaints made to employment tribunals that are without merit. One of the main reasons for the high number of such claims is the fact that there is no risk and little disincentive for a claimant in bringing a claim. For the employer on the other hand there is always considerable cost and time incurred in defending a claim, however weak it may seem. The IoD therefore strongly welcomes the Government's plans to introduce fees for bringing employment tribunal claims. Introducing fees should help deter claimants who know they have a weak case.

One aspect of the proposed fees regime for employment tribunals though that concerned us was the use of the HMCTS fees remission system, particularly for those on certain benefits, eg Jobseekers Allowance. This could cover the great majority of those who have lost their job and are making a claim for unfair dismissal. The Government's Impact Assessment estimated that as many as three-quarters of claimants would be eligible for full or partial remission. We believe such a high level of exemptions would undermine the effectiveness of the proposed fees regime for employment tribunals.

Given our concerns, we welcome the proposals for overhauling the fees remission system proposed in the consultation document which go a considerable way towards alleviating our concerns. In particular the proposals for a disposable capital test and for basing the test on household rather than individual capital and income alleviate our main concerns about the current remissions system.

Answers to specific questions

Question 1

Do you agree that there should only be one remission system in operation within HMCTS operated courts and tribunals and the UK Supreme Court? Please state the reason(s) for your answer.

Yes we agree. It will make for a simpler system for both those accessing and those administering fee remissions which in turn should lead greater administrative efficiency and consistency.

Question 2

Do you agree that disposable capital should be considered when deciding fee remission eligibility? Please state the reason(s) for your answer.

Yes we agree that those with savings or other disposable capital should not be entitled to fee remission, but should use such capital to fund a claim.

Question 3

Do you agree with the proposed disposable capital limits? Please state the reason(s) for your answer.

Yes we agree with the proposed capital limits, bearing in mind that most fees fall at the lower end of the scale, and that the average value of a remission last year was just £142.

Question 4 – Do you agree with the proposed terms of the disposable capital test? Please state the reason(s) for your answers.

Yes we agree with proposed terms of the disposable capital test. However, in respect of the capital to be disregarded, we think certain payments will need to have a time limit applied. For example, Jobseeker's back to work bonus, unfair dismissal capital payments received, and compensation for a personal injury or medical negligence paid as a lump sum should only be disregarded if paid in the previous 12 months. Otherwise, an applicant will be able to subtract any such sums ever received at any time from their present capital, even if the reality is that such sums were spent long ago and their present capital is in fact "normal" savings.

Question 5 – Do you agree with the proposed evidence requirements and enforcement mechanism of the capital test? Please state the reason(s) for your answer.

The proposed self-declaration looks quite weak as a means of ensuring compliance with the capital test. In practice it seems unlikely that there will be anything obvious about an application for fees remission that might raise suspicions of a false declaration. The Impact Assessment acknowledges that there could be a high degree of underreporting of capital (an assumption of 46% is made) and that this could raise the cost of paying fee remissions significantly. In view of this, we suggest some form of penalty should apply if an applicant is found to have falsely claimed a remission. The threat of a penalty will have a greater deterrent effect than merely the threat of having to pay the fee if found out.

Question 6 – Do you agree that these proposals strike the right balance in targeting eligibility for full and partial remission through a simple and workable system? If you do not agree, please explain why, and what alternatives you propose.

We broadly agree with what is proposed for the incomes test, though we are surprised that those in receipt of certain benefits (Income-related Employment and Support Allowance, Income Support, Income-based Jobseeker's Allowance and Pension Credit guarantee credit) will automatically receive full remission. We do not understand the rationale for apparently excluding a partner's income in such circumstances. This seems to be inconsistent with the proposal to take account of household income for other cases (with only very limited exceptions), including where the applicant is in receipt of the new Universal Credit.

Question 7 – Do you agree that there should be a gross monthly income cap so that those with a certain amount of income would be ineligible for a partial remission and would pay the fee in full? If so, do you agree that a single cap of £4000 is appropriate or should the Government consider varying the cap for different fee levels? Please state the reason(s) for your answer.

Yes we agree with a gross monthly income cap, set at £4000. A single cap is the simplest approach.

Question 8 – Do you agree with the proposed evidence requirements for the income test? Please state the reason(s) for your answer.

Yes we agree. The proposals aim to strike a balance between requiring sufficient evidence to avoid false claims, and creating an undue barrier to justice for applicants.

Question 9 – Do you agree that eligibility to a remission should be based on assessment of household means? Please state the reason(s) for your answer.

Yes we agree. We were concerned at the fact that, under the plans for remissions from employment tribunal fees, in a household with significant income from a partner, an individual would nevertheless be able to claim a full or partial fees remission. We welcome the proposal to include household capital and income in the assessment.

Question 10 – Do you envisage other circumstances where a contrary interest could apply? Please state the reason(s) for your answer.

No.

Question 11 – Do you agree that the existing process for third party applications should be applied to all courts and tribunals subject to this consultation, and that the current practice in the Court of Protection should continue? Please state the reason(s) for your answer.

Yes. In particular, it should apply in the case of applications for employment tribunal fees remissions.

Question 12 – Do you agree that providing copies of documents and searches should be exempt from the remission system? Please state the reason(s) for your answer.

This is not an issue in relation to employment tribunals.

Question 14 – Do you agree that the time limit for making a retrospective remission should be reduced to two months? Please state the reason(s) for your answer.

Yes we agree. Two months seems adequate, and there will be the possibility of allowing longer where justified.

Question 15 – Your views are welcome on whether there are any other factors we need to take into account for claimants seeking remissions in multiple claims.

In our response to the consultation on employment tribunal fees we said it would be simpler to give remission to each individual entitled to it, with those not entitled continuing to pay the same level they were expecting, rather than making up the shortfall resulting from any remissions. It could take a long time to work out what the fee will be if one has to await evidence of eligibility for remission from each individual. We remain of that view.

Question 16 – Overall, do you agree that this provides a fair, transparent and workable structure for determining fee remissions for HMCTS and the UK Supreme Court? Please state the reason(s) for your answer.

Subject to the points made above about penalties for false declarations of capital and assessment of household income in respect of individuals in receipt of certain benefits, we agree with what is proposed.

Question 17 – Do you think the proposed remission system is likely to have any positive or adverse equality impacts? Please state the reason(s) for your answer.

We agree that the proposals are a proportionate means of achieving a legitimate aim.

Thank you once again for inviting the Institute of Directors to participate in this consultation. We hope you find the comments useful.

Yours sincerely



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