



Bar Council response to the Ministry of Justice consultation paper on Revising the 'Help with Fees' remission scheme

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Ministry of Justice consultation paper on Revising the 'Help with Fees' remission scheme.¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

The income test proposals

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.

¹ Available here: <https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>

4. No. The proposed income threshold of £1,420 for a single applicant is too low. The old threshold was £1,170 set in 2013 and the Bar Council would expect a more generous increase. 2019/20 LCF data has been used in the calculation, which is very out of date, particularly considering the current period of high inflation.

5. The consultation document rightly recognises the importance of acting consistent with its Means Test Review. Paragraph 56 of the consultation paper stated:

“Where appropriate, we have sought to maintain consistency between our proposals to revise the HwF scheme and the proposals for updating the legal aid scheme, as set out in the ‘Means Test Review’ (Legal Aid MTR) consultation published in March 2022.”

6. On 25 May 2023 the Government published its Response to the Means Testing consultation. It stated that it would review the proposed Means Test thresholds to take account the inflation that has taken place since the consultation was issued, and have a mechanism to increase the thresholds as inflation continues:

“115. [...] we acknowledge consultees’ concerns about ongoing financial pressures, notably inflation and the cost of living pressures [...] we will consider this threshold ahead of implementation to ensure the means test continues to protect access to justice, and remains sustainable in the short, medium, and long term. Later in 2023 the ONS data sets covering FY 2021/22 will be available to help inform this process.”

“453. Reviewing the MTR [Means Test Review] measures 3-5 years post implementation aligns with typical government post implementation review time-frames and we maintain that this is a reasonable period to allow for changes to settle in. Any review undertaken sooner than this might not provide an accurate picture of any impact being felt. Many concerns were in relation to thresholds and how our proposals could be outpaced by the rate of inflation. We believe this concern is addressed by our recommended approach to consider threshold values prior to implementation.”

7. The Bar Council's recommendation is for an automatic annual inflation adjustment rather than rely on periodic reviews which carry with them a high degree of uncertainty.

8. In summary:

- the threshold figures should be increased to take account of recent inflation;
- there should be an automatic inflation mechanism built in for annual increases.

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.

9. No. As stated in answer to Q.1. 2019/20 is very out of date, particularly with the recent high inflation.

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.

10. The Government proposes to rely on living costs which it knows to be out of date during a "Cost of Living Crisis". The 2021/22 data should have been available around the time the consultation was published, and even more up to date information can be used as part of the Government's consideration of consultation responses. See our answer to Q.1.

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.

11. No. The Government's first rationale for withholding inflationary adjustments to the income thresholds applies only to predictions of future inflation. There is no uncertainty regarding historic inflation in the years 2020 to 2023. To place reliance on the 2019/20 LCF data without adjusting for the significant inflation in those years is to knowingly undervalue the proposed income thresholds.

12. In relation to the other consultation questions, the Bar Council defers to other stakeholders with more direct experience and specialist expertise.

Bar Council²

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For further information please contact

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² Prepared by the Legal Services Committee