



Department  
of Health &  
Social Care

# **Equality Duty Analysis**

## **Extending fixed recoverable costs to lower value clinical negligence claims**

Published January 2022

## Contents

Equality Duty Analysis .....	1
Introduction .....	3
Equality Duty Analysis.....	3
What are the intended outcomes of this work? .....	3
Who could be affected? .....	5
Is this equalities analysis compliant with UN Convention on the Rights of the Child? .....	5
Is this equalities analysis compliant with UN Convention on the Rights of Persons with Disabilities? .....	6
Analysis of protected characteristics .....	8
Data sources .....	8
Methodology .....	9
Disability .....	9
Sex .....	11
Sexual orientation .....	12
Race .....	12
Age .....	13
Gender reassignment .....	14
Religion or belief .....	14
Pregnancy and maternity.....	14
Marriage and civil partnership.....	15
Other identified groups: .....	15
Summary of analysis .....	16
Addressing the impact on equalities .....	17

# Introduction

The general equality duty that is set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not

The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality but doing so is an important part of complying with the general equality duty.

## Equality Duty Analysis

**Title: analysis of equalities for applying fixed recoverable costs to lower value clinical negligence claims**

### What are the intended outcomes of this work?

Consultation responses to the introduction of an FRC scheme in 2017<sup>1</sup> highlighted, as a potential risk, that the scheme may prevent those with a lower income from accessing justice compared to those earning more. This would be due to those with a lower income receiving lower compensation for loss of earnings; therefore, their claims would be more likely to come under the FRC remit. In their answers to the consultation, respondents provided details of a number of groups which they thought fell into the lower income bracket. These were as follows: children, the elderly, women, ethnic minorities, the disabled and people with long term conditions. Characteristics identified in the responses are protected characteristics listed in the Equality Act. Other respondents to the consultation in 2017 pointed out no equality issues have arisen from the FRC regime in place for personal injury claims. However, we still need analysis on clinical negligence

---

<sup>1</sup> Department of Health (2017). **Clinical negligence fixed recoverable cost consultation and summary of responses**

Department of Health (2017). *Introducing Fixed Recoverable Costs in Lower Value Clinical Negligence Claims*. London, DHSC. Available online at: [Fixed recoverable costs for clinical negligence claims](#)

Department of Health and Social Care (2018). *Consultation on Introducing Fixed Recoverable Costs in Lower Value Clinical Negligence Claims: Summary of Consultation Responses*. London, DHSC. Available online at: [Fixed recoverable costs for clinical negligence claims](#)

claims in relation to protected characteristics to understand if equalities issues may arise upon implementation of the scheme.

“Lower value clinical negligence claims” refers in the current consultation, impact assessment and equalities analysis to: clinical negligence claims with an expected value in excess of the small claims track limit for non-road traffic accident personal injury claims, up to and including £25,000. The small claims track limit is currently £1,000 but is set to increase to £1,500 in April 2022.

The intended outcome of this analysis was to assess if the introduction of the FRC scheme to lower value clinical negligence claims would have a negative impact on those with protected characteristics. In line with the equality duty, we also need to assess whether there is unlawful discrimination towards protected groups. In this document, we will consider 2 main types of discrimination, direct discrimination and indirect discrimination, as defined by the Equality and Human Rights Commission (ECHR). Direct discrimination is defined as ‘treating one person worse than another person because of a protected characteristic’. Indirect discrimination is defined as ‘when an organisation puts a rule or a policy or a way of doing things in place which has a worse impact on someone with a protected characteristic than someone without one.’ The analysis of protected characteristics will focus on whether any population will be discriminated against at all, either directly or indirectly.

Accurate statistical analysis, to test for statistical significance, cannot be carried out on the sample of successful claims available, because the sample size is too small. Any conclusions drawn from this analysis should take into account the limitations of this sample size.

In addition to this, we have reviewed the Ministry of Justice fixed recoverable costs consultation response, “[Extending Fixed Recoverable Costs in Civil Cases: The Government Response](#)”, published in September 2021<sup>2</sup>, and the accompanying Equality Assessment to determine whether any equality issues were raised by respondents. We have drawn out relevant comments to inform this assessment, however, the assessments are not directly comparable as the primary groups affected by the reforms in each case are different (in particular the MoJ consultation excludes clinical negligence cases from its proposals).

Responses to this consultation highlighted that there are parties with certain protected characteristics who may incur additional costs when bringing a civil claim. This may include individuals lacking mental capacity and children.

---

<sup>2</sup> Ministry of Justice (2021). Fixed Recoverable Costs Consultation. <https://consult.justice.gov.uk/digital-communications/fixed-recoverable-costs-consultation/>

## Who could be affected?

The primary group that could be affected by FRC reform are the claimants i.e. those who bring legal action against a healthcare provider. Our analysis therefore focusses on how claimants with protected characteristics could be impacted.

## Is this equalities analysis compliant with UN Convention on the Rights of the Child?

In undertaking the analysis that underpins this document, where applicable, the department has also taken into account the [United Nations Convention on the Rights of the Child](#), in particular Article 3<sup>3</sup>.

Article 3 states the following:

- 1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- 2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- 3) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The introduction of the FRC scheme is unlikely to directly discriminate against any protected characteristics as it focuses on fixing recoverable legal costs rather than any changes to compensation for clinical negligence claims. There is a possible indirect impact by virtue of certain groups being in more frequent contact with the healthcare system and therefore have a greater likelihood of experiencing an incident. However, this is seen in the 41 and over age brackets and a higher proportion of claims involving children, specifically obstetrics claims, are likely to fall outside of the FRC remit. The

---

<sup>3</sup> UN Convention on the Rights of the Child. Accessed from: [UN Convention on the Rights of the Child \(UNCRC\) - UNICEF UK](#)

department will take effective and appropriate measures to ensure that the best interests of the child will be a primary consideration.

## **Is this equalities analysis compliant with UN Convention on the Rights of Persons with Disabilities?**

In undertaking the analysis that underpins this document, where applicable, the department has also taken into account the [United Nations Convention on the Rights of Persons with Disabilities \(CRPD\)](#), in particular Articles 5, 12 and 13<sup>4</sup>.

Article 5 – Equality and non-discrimination – states the following:

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 12 – Equal recognition before the law – states the following:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue

---

<sup>4</sup> United Nations Convention on the Rights of Persons with Disabilities. Accessed from: [Convention on the Rights of Persons with Disabilities \(CRPD\) | United Nations Enable](#)

influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13 – Access to Justice – states the following:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The introduction of the FRC scheme will not directly discriminate against any protected characteristic as it focuses on fixing recoverable legal costs rather than any changes to compensation for clinical negligence claims. There is a possible indirect impact by virtue of certain groups being in more frequent contact with the healthcare system and therefore have a greater likelihood of experiencing an incident. The department recognises that certain individuals are likely to require additional support as part of the legal process (in preparing documents, attending court, and obtaining advice from counsel), which will incur increased costs. In order to prevent individuals being disproportionately financially impacted by the claims process or their access to justice being limited by these additional costs, options such as an additional, 'bolt-on' fee of £650 for these cases are being considered. The department will take effective and appropriate measures to ensure that the best interests of disabled people will be a primary consideration.

# Analysis of protected characteristics

## Data sources

- Dataset of successful claims against NHS trusts in 2018 to 2019
- Ipsos MORI population survey (2013)
- NHS adult inpatient survey (2013)
- Office for National Statistics (ONS)

## Claims dataset

A claims sampling exercise was done on a random sample of 583 successful claims against NHS trusts in 2018 to 2019. This claims dataset was used in our analysis for protected characteristics; where the data was not available in this sample other sources were used. For the purpose of our analysis of the above claims dataset, only successful claims with total damages settled between £1,001-£25,000 were used. Of these initial 583 claims, the year 2018 to 2019 was analysed and in total there were 434 claims. After analysis of claims in 2018 to 2019 with total damages settled between £1,001-£25,000 there were a total of 94 claims. This is unpublished data.

## Ipsos MORI population survey (2013)

The analysis also considered an Ipsos MORI 2013 population survey which contained population data relevant to certain protected characteristics under the Equality Act 2010, especially where there was little data from the successful claims dataset on particular characteristics. This was a population survey administered by Ipsos MORI in 2013, to provide data on the proportion of people in the population who believed they had been harmed by their treatment, incidence of adverse events in healthcare and whether a legal claim was pursued or not. The results of the survey were reported in research by Fenn & Gray et al (2016)<sup>5</sup> and Gray & Fenn et al (2017)<sup>6</sup> although the Ipsos MORI datasets have been used to provide demographic breakdowns.

## NHS adult inpatient survey (2013)

NHS inpatient surveys were used to characterise the users of the NHS and enable comparisons to those who believed they experienced harm and went on to pursue a legal claim. The survey includes data from NHS trusts in England; eligibility criteria for

---

<sup>5</sup> Fenn, P., Gray, A., Rickman, N. and Vencappa, V., (2016). Funding Clinical Negligence Cases; Access to justice at reasonable cost. London (UK): Nuffield Foundation: [Funding clinical negligence cases: Access to justice at a reasonable cost? - Nuffield Foundation](#)

<sup>6</sup> Gray, A. M., Fenn, P., Rickman, N., & Vencappa, D. (2017). Changing experience of adverse medical events in the National Health Service: Comparison of two population surveys in 2001 and 2013. *Social Science & Medicine*, 195, 83-89: [Changing experience of adverse medical events in the National Health Service: Comparison of two population surveys in 2001 and 2013 - ScienceDirect](#)



respondents was to be age 16+ and have spent at least one night in hospital. Data from the 2013 survey was used to allow for the most appropriate comparability<sup>7</sup>. The data used from these surveys is all publicly available.

## Office for National Statistics (ONS)

The Office for National Statistics website was used to gather statistics about the general population of England and when statistics on England were not available the UK general population was looked at. The UK population was only used for statistics on employment and disability. The data used from ONS was all publicly available.

## Methodology

Using the data above we have, generally speaking, relied on a comparison with one other data source for our analysis. We have relied on the assumption that, relative to the general population, those who engage with the healthcare system more frequently are more likely to be subject to an adverse incident and are therefore more likely to be subject to FRC reforms. Although not explicitly accounted for, we would expect lower severity incidents to be more likely to be in the scope of FRC. Where we have been able to, we have tried to consider the impact of severity of harm on likelihood of engagement with FRC. Where this has not been possible, we have relied on frequency of healthcare contact as a measure of FRC engagement and assumed the severity of incidents is consistent across protected characteristics and sub-groups.

## Disability

There are 2 aspects to disability to be considered in this analysis: 1. disability prior to the adverse event incident and 2. disability following the adverse event. The data available to us from the 2018 to 2019 claims dataset was not comprehensive enough to analyse disability directly. However, we do hold data, in the form of research from Baines et al. (2015)<sup>8</sup> and Hogan et al. (2015)<sup>9</sup> in relation to the first aspect, on pre-existing condition. On the second aspect, we hold data from the Ipsos MORI population survey (2013) on impairment following an adverse event, which will be used for analysis.

---

<sup>7</sup> NHS Adult Inpatient Survey (2013): <https://nhssurveys.org/surveys/survey/02-adults-inpatients/year/2013/>

<sup>8</sup> Baines, R., Langelaan, M., de Bruijne, M., Spreeuwenberg, P. and Wagner, C. (2015). "How effective are patient safety initiatives? A retrospective patient record review study of changes to patient safety over time". *BMJ quality & safety*, 24(9), pp.561-571: <https://qualitysafety.bmj.com/content/24/9/561>

<sup>9</sup> Hogan, H., Zipfel, R., Neuburger, J., Hutchings, A., Darzi, A. and Black, N. (2015). "Avoidability of hospital deaths and association with hospital-wide mortality ratios: retrospective case record review and regression analysis". *BMJ*, 351, p.h3239: <https://pubmed.ncbi.nlm.nih.gov/26174149/>

## Pre-existing condition

Although not directly comparable to disability, we might expect a positive correlation between those identifying as having a pre-existing condition and those that would identify as disabled. We know from various research (Baines et al, 2015 & Hogan et al, 2015) that those who experience an incident in healthcare often have a complex condition or an illness where treatment may take place over a long period of time. In those circumstances, complications may be more likely to arise. Therefore, we expect those with a pre-existing condition to come into contact with the healthcare system more often than those without these conditions, increasing the possibility of an adverse event. This means that there could be an element of indirect discrimination on the basis of disability.

## Disability following an adverse event (Ipsos Mori population survey)

The Ipsos MORI survey details the self-reported severity of an injury following a clinical negligence incident in an NHS setting. In this document we assess the subset of survey respondents who pursued a legal claim (53 respondents, out of a total of 497 who suffered harm due to medical treatment/care). Survey respondents were asked, following the adverse event, 'How severe would you say were the consequences for your health?'. The results highlighted that, across all possible health outcomes, those who pursued a claim were more likely to have suffered a permanent major disability. However, of all those who reported pursuing a legal claim in the survey, it was less likely that individuals suffered permanent major disability compared to minor and/or temporary disability (24% compared to 55%).

**Table 1 – reported severity of consequences to health in Ipsos Mori survey**

Severity of consequence to health	Ipsos MORI population survey 2013: pursued a legal claim (%) n=53
Insignificant	5
Emotional	12
Temporary minor disability	16
Temporary major disability	19
Permanent minor disability	19
Permanent major disability	25
Don't know	4
Refused (to provide answer on injury severity)	0

Although those who have suffered permanent major disability are unlikely to fall into the FRC remit, we might expect those who suffer less severe consequences to health to

receive less compensation and therefore be more likely to fall into the FRC remit than those with severe disability. Within the Ipsos Mori survey, 35% of survey respondents who pursued a legal claim reported disabilities of lower severity, specifically temporary minor and temporary major disabilities, suggesting that these claimants might be disproportionately impacted by FRC reforms compared to claimants with permanent major and/or minor disability.

Subject to the limitations described below, overall we would expect the scheme to have an indirect disproportionate effect on those with a disability. People with pre-existing conditions are likely to come into more frequent contact with healthcare services which may put them at higher risk of an adverse event and therefore subject to changes under the new scheme. Further, we might expect those who make a claim and suffer a temporary disability to be indirectly disproportionately impacted compared to those who suffer a permanent disability due to the former receiving relatively lower levels of compensation compared to the latter and therefore being more likely to be in scope of the new scheme.

With insufficient data available on disability within the claims dataset sample, we have based our assumptions on the analysis of those with a pre-existing condition and disability following the incident. This is because we would expect disability to interact with the introduction of the scheme in the same way that pre-existing condition has. If this is the case, there will be an indirect effect on groups with a disability, but this should not be taken as definite. Further analysis should be done after introduction of the scheme to see how disability, as a factor, interacts with the FRC scheme in lower value clinical negligence claims.

In addition to the points raised above, the department recognises, more generally, that there are some cases which incur extra costs, particularly those involving protected parties (such as individuals lacking mental capacity, or children). These costs include the legal work involved in preparing court documents, liaising with clients and attending a hearing as well as the cost of obtaining advice from counsel. Options such as an additional, 'bolt-on' fee of £650 for these cases are included in our proposals in order to ensure the costs are appropriate to the work undertaken by claimant lawyers in these claims and that these protected party claimants are not disproportionately impacted by the additional costs involved in their claim.

## **Sex**

Analysis of this characteristic was undertaken using the dataset of successful claims against NHS trusts in 2018 to 2019. Within claims settled between £1,001- £25,000 in 2018 to 2019, 56.4% were from women and 43.6% came from men. This was compared to the NHS adult inpatient survey, which looks at the experiences of adults admitted to hospital as an inpatient: in 2013, the demographic breakdown of the completed survey was 44% male and 54% female. There is a minor difference between users of the NHS and those who pursued a legal claim. Given the difference is not large, the evidence

suggests claimants might not be disproportionately impacted by implementation of the scheme on the basis of sex. Further analysis and evaluation should be conducted after the scheme is introduced.

## Sexual orientation

We do not currently hold any data on this claimant characteristic. The consultation requests evidence of impacts on groups with this characteristic and further data should be collected after implementation of any proposals following consultation, for analysis on the scheme’s impact on this characteristic.

## Race

Data for race was not available in the claims dataset. Instead, we have used the Ipsos MORI population survey in 2013 which detailed demographic breakdowns of the data including race. These demographics were from a subset of the population survey that had reported any illness, injury or impairment that in their opinion was caused by medical treatment or care (n=497). Of this subset, 53 went on to pursue a legal claim for financial compensation; the demographic breakdown is of this group. This data was compared to the NHS adult inpatient survey data and population 2011<sup>10</sup> census as these were the most accurate and recent data sources available.

**Table 2 – Breakdown of race across Ipsos Mori, NHS inpatient and ONS data**

Race	Ipsos MORI survey 2013: pursued legal claim (%) n=53	NHS adult inpatient survey 2013 (%)	Population census 2011 (%)
White	90	95	86
Asian/Asian British	4	3	8
Black/African/Black British	6	1	3
Mixed	0	1	2
Other	0	0	1

Comparison of the percentages from the Ipsos MORI survey, NHS adult inpatient data and the population census shows there is no significant difference between these data sources. Notably, a higher percentage of Black/African/Black British respondents claimed than the percentage of that group in the NHS inpatient survey or in the wider population. Asian/Asian British respondents claimed at a lower percentage than the percentage of Asian/Asian British people in the population. Although these differences are not large, the

<sup>10</sup> ONS population statistics (2011): <https://www.ons.gov.uk/census/2011census>

impacts on these groups should be monitored, taking into account the responses to this consultation. As the sample size for the breakdown, by race, of people who make a claim (n=53) is small, it may not be truly representative, therefore this characteristic should continue to be evaluated. Further analysis and evaluation should be conducted after the scheme is introduced.

## Age

The dataset of successful claims against NHS trusts in 2018 to 2019 was used to analyse this characteristic and compared to population data from 2018 to 2019<sup>11</sup>, as the NHS adult inpatient data does not include those under 16 years of age.

**Table 3 – Breakdown of age across claims dataset and ONS data**

Age	Dataset 2018 to 2019 (%)	Population 2018 to 2019 (%)	Difference between dataset and population (%)
0-4	0	6	-6
5-9	2.1	6.3	-4.2
10-14	2.1	5.9	-3.8
15-19	1.1	5.5	-4.4
20-24	5.3	6.3	-1
25-29	4.3	6.8	-2.5
30-34	2.1	6.8	-4.7
35-39	11.7	6.6	5.1
40-44	6.4	6.1	0.3
45-49	4.3	6.8	-2.5
50-54	9.6	7	2.6
55-59	10.6	6.4	4.2
60-64	4.3	5.4	-1.1
65-69	6.4	5	1.4
70-74	6.4	4.9	1.5
75-79	7.5	3.3	4.2
80-84	6.4	2.5	3.9
85-89	3.2	1.6	1.6
90+	5.3	1	4.3

The data from the claims dataset above also shows that a higher percentage of individuals in older age brackets claimed compared to the percentage of these age groups in the population. The data of interest is highlighted in blue and it can be seen that from

<sup>11</sup> ONS population statistics:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/mid2018>

35 onwards the sample of claimants in each subset is higher than the population demographic, except for the '45-49' and '60-64' age brackets.

The largest difference between dataset and population is seen in the 35-39 age bracket at approximately 5%, showing that a higher percentage of 35-39 year olds claimed than the percentage of this group in the population. Analysis of the claims dataset and the injuries suffered by claimants does not provide any indication as to why this age group might be over-represented in the sample of successful claims, this may be due to the size of the sample available.

Research by Baines et al. (2015) suggests that those in the '41 and above' age bracket are more likely to be admitted into hospital as an inpatient than those in lower age groups. We could therefore expect to see more adverse events within these older age groups, compared to the younger population due to their more frequent interactions with healthcare providers and settings. We would expect the scheme to have a potential indirect disproportionate effect on those in older age bands due to their increased contact with healthcare services.

## **Gender reassignment**

We do not currently hold any data on this claimant characteristic. The consultation requests evidence of impacts on groups with this characteristic and further data should be collected after implementation of any proposals following consultation, for analysis on the scheme's impact on this characteristic.

## **Religion or belief**

We do not currently hold any data on this claimant characteristic. The consultation requests evidence of impacts on groups with this characteristic and further data should be collected after implementation of any proposals following consultation, for analysis on the scheme's impact on this characteristic.

## **Pregnancy and maternity**

We do not currently hold any data on this claimant characteristic. Analysis undertaken of data provided by NHS Resolution on specialities and damages band for all notified claims over recent years has shown that approximately 6 - 8% of non-cerebral palsy/brain damage claims and approximately 0 - 2% of cerebral palsy/brain damage claims would fall under the proposed FRC remit of lower value clinical negligence claims (up to and including £25,000 in damages). The consultation requests evidence of impacts on groups with this characteristic and further data should be collected after implementation of any proposals following consultation, for analysis on the scheme's impact on this characteristic.

## Marriage and civil partnership

We do not currently hold any data on this claimant characteristic. The consultation requests evidence of impacts on groups with this characteristic and further data should be collected after implementation of any proposals following consultation, for analysis on the scheme's impact on this characteristic.

## Other identified groups:

### Employment

Although not a protected characteristic, responses to the previous consultation identified lower income as a possible factor impacted by the new scheme. Concern was raised that lower income groups would be disproportionately impacted as damages would be small due to no or little loss of earnings and this in turn might affect their access to justice, including difficulties in accessing legal support.

There was some data available on household income in the Ipsos MORI survey, however only approximately two-thirds of respondents who reported an adverse event were prepared to report their household income. The findings did suggest some evidence of a trend, with the highest rates of reported injury in the lowest income quintiles.

Data on employment status was also available in the Ipsos MORI survey and as employment is linked to income, this helps to inform our conclusions. The breakdown of employment in the Ipsos MORI survey compared to the most recent data comparison source available, being the 2011 population census data on economic activity<sup>12</sup>, was as follows:

**Table 4 – employment status comparison between Ipsos Mori and ONS data**

Employment status	Ipsos MORI survey 2013 (%)	Population 2011 (%)
Full-time	40	38
Part-time	8	14
Not working	55	34

Note: these figures do not capture all forms of employment activity.

The majority of respondents who pursued a legal claim were 'not working'. This meant they had indicated that the impact to their work from the incident was not relevant as they were either retired or not working at the time. This is compared to approximately 34% of

<sup>12</sup> ONS Population Statistics (2011):

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/keystatisticsandquickstatisticsforlocalauthoritiesintheunitedkingdom/2013-12-04#economic-activity-and-hours-worked>

the general population who were retired, unemployed or unable to work for other reasons such as long-term health issues. The difference compared to the general population of those not working is notable, therefore there may be a disproportionate impact on this group.

From the evidence on employment, it seems as though there may be a possible disproportionate impact on those not working. Although there is no evidence of direct discrimination occurring, there may be possible indirect discrimination occurring where certain protected characteristics coincide with others. For example, older people are more likely to be retired and we know this population is in contact with the healthcare system more frequently.

Overall, people with certain employment status may be indirectly impacted by the scheme, but this is not a protected characteristic set out in the equality duty. The 2017 consultation document response sets out the protected characteristics expected to be linked to lower income, which include children, the elderly, women, ethnic minorities, the disabled and people with long term conditions. Analysis of many of these protected characteristics has been carried out (as set out in this document) and more accurate conclusions can be drawn from the analysis of these. It would be important to look at income directly after implementation of the scheme, as for now, we can only base assumptions from analysis of other characteristics.

## **Summary of analysis**

We have not found evidence that these proposals for an FRC scheme for lower value clinical negligence claims would directly disproportionately affect any group with protected characteristics. However, there are indications of potential indirect effects on certain protected characteristics, as follows: age, disability (based on pre-existing condition and disability after the incident), race, and employment status.

As summarised in each subsection, the overall caveat to many of the findings in this document is that the characteristics which may be indirectly affected are populations which we would expect to be in more frequent contact with healthcare settings and therefore have a higher likelihood of experiencing an incident compared to others. It is not expected that the introduction of the FRC scheme would directly cause discrimination against these groups.

It should also be noted that any indirect or disproportionate effects could be positive or negative. The policy intent of the proposed FRC scheme is to ensure claims are processed quickly, fairly, and cost-effectively, via a streamlined process and at a cost that is more proportionate to the value of the claim. If successfully implemented, we would expect these proposals to have a positive impact for claimants, enabling them to reach fair resolution more swiftly, and reducing the stress of drawn-out litigation.



Analysis of protected characteristics directly related to income showed no significant direct negative impact on any group. This would suggest the impact on equalities of these proposals for clinical negligence claims would be similar to the impact of previous reforms in personal injury litigation. On the evidence examined in this analysis we would not expect there to be a significant impact on equalities.

The current FRC consultation seeks further evidence on impacts on groups with protected characteristics. The government will ensure that any such evidence, including evidence of impacts on protected characteristics for which we do not currently have sufficient data, is analysed and taken into account should the proposals be implemented. The consultation also proposes that a post-implementation review should consider impacts on equalities.

### **Addressing the impact on equalities**

This analysis has not found evidence of a likely direct impact on equalities or direct disproportionate effects on any group with a protected characteristic. Further analysis to assess the impact on protected characteristics will be done on any further evidence submitted as part of this consultation and at any post-implementation review, should the consultation proposals be implemented.

© Crown copyright 2022

[www.gov.uk/dhsc](http://www.gov.uk/dhsc)

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

**OGL**