



Whiplash Reform Programme

Equalities Statement

1. Introduction

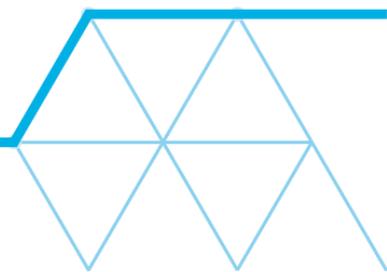
- 1.1. This Equality Statement considers the impact on groups and individuals with protected characteristics of the Government's reforms to tackle the continuing high number and cost of whiplash claims and, in the case of the small claims track, wider personal injury claims. Our analysis was carried out following consultation with stakeholders.

2. Policy objective

- 2.1. On 23 February 2017 Ministers announced a new set of measures to tackle the continuing high number and costs of whiplash claims. Two measures (a tariff of predictable damages for whiplash claims with an injury of up to two years; and a ban on offers and requests to settle such claims without medical evidence) were introduced into Parliament as part of the Prisons and Courts Bill on the same day.
- 2.2. An additional measure, to increase the small claims track limit for personal injury (PI) claims from £1,000 to £5,000 for RTA-related PI claims and to £2,000 for all other PI claims, will be brought forward through secondary legislative changes.
- 2.3. The Government aims to implement these reforms together as a package as soon as parliamentary time allows.

3. Equality duties

- 3.1. Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
 - eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and



- foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

3.2. In carrying out this duty Ministers and the Department must pay “due regard” to the nine “protected characteristics” set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

4. Summary

- 4.1. Consideration has been given to the impact of the proposed legislative changes, both through primary and secondary legislation, against the statutory obligations under the Act. Our assessment is outlined below. We do not consider that the proposals will result in any unlawful discrimination.
- 4.2. Although the characteristics of claimants who register a personal injury claim are not centrally recorded, there is equalities related data for 2014/15 (on age and sex) from the DWP Compensation Recovery Unit (CRU) that we have used in our equalities analysis. There is, however, potential for claimants to be drawn from all walks of life including those who share relevant protected characteristics and those who do not.
- 4.3. The development of a tariff of fixed compensation payments for whiplash claims with an injury of up to two years in duration will simplify the current system and reduce the need for protracted discussions around quantum. All claimants making a whiplash claim will continue to receive compensation for pain, suffering and loss of amenity, albeit at a different rate than is paid under the current framework. Compensation to cover out of pocket expenses suffered as a result of their accident will also continue to be paid to all eligible claimants. The revised rates of compensation payable are the same for all claimants, regardless of any protected characteristics.
- 4.4. The ban on making and seeking offers to settle claims without medical evidence also applies to all claimants, regardless of their background. This reform will help ensure that claims are genuine and that the correct level of compensation is paid to claimants. Requiring that a claim is accompanied by a medical report undertaken by an accredited medical expert will also ensure that all claimants, regardless of any protected characteristics (or none), will be protected from under settlement by providing them with the information they need to understand the actual value of the claims for the injury they have received.
- 4.5. The increase in the small claims track limit - for RTA personal injury claims to £5,000 and for all other personal injury claims to £2,000 - may lead to more claimants bringing their own claims without legal representation. In these circumstances there are a number of options available to claimants, including paying for a lawyer or seeking help and support from other sources through the use of a damages based agreement, such as those commonly offered on ‘no win, no fee’ terms. Some claimants will also take out ‘before the event’ or ‘after the event’ insurance policies. In addition, the court has a responsibility to ensure that all parties fully understand the process - including providing reasonable adjustments for those who may need them - and that the proceedings are fair. The Court may allocate a claim to the fast track if they are of the view the claim is more complex and claimants may also apply to the court to transfer their case to the fast track if it is particularly complex and it is considered reasonable to do so.

5. Direct discrimination

- 5.1. Our assessment is that the proposed changes are not directly discriminatory within the meaning of the Act as they apply equally to all claimants irrespective of their background and will not result in people being treated less favourably as a result of any protected characteristic.

6. Indirect discrimination

- 6.1. We do not believe that these reforms will amount to indirect discrimination within the meaning of the Act, since the resulting changes are unlikely to result in anyone sharing a protected characteristic being put at a particular disadvantage. We have used the available data to support this in our analysis below.
- 6.2. The Compensation Recovery Unit (CRU), record both the age and sex of claimants in motor liability claims. 2014/15 CRU data shows that men accounted for 58% of motor liability claims. Men are therefore over represented amongst these claimants when compared to the general population¹ (49 per cent), and may therefore be differentially impacted by the proposals.
- 6.3. In 2014/15 those aged between 31 and 50 years old accounted for 41% per cent of motor liability claims. This age group are over-represented in comparison with the general population (27 per cent²) and may therefore be differentially affected by the proposals. Similarly, those aged between 18-30 might be differentially affected as they represent 32% of motor claims and again are over-presented compared to the general population (over 14 per cent³)
- 6.4. Motor liability claimants can be passengers as well as drivers and therefore a proportion of claimants (9 per cent) are younger than the legal driving age of England and Wales. The proposal to raise the SCT limit could adversely impact children in several ways. Firstly, because all RTA claims on behalf of children under 18 years old must be settled via the court, the proposal to raise the SCT limit could adversely impact on children. This is because they may no longer be able to recover their legal costs from the at fault insurer, but dependent on the value of the claim they may decide to pay them from their damages. It has also been assumed in the final stage IA that claims involving minors would remain in the fast track due to the application of judicial discretion, but if this does not occur then this could also be a potential impact.
- 6.5. There are, however, limitations to the data sources presented. Data is limited to just two of the nine protected characteristics (age and sex) and the latest data available is for 2014/15. As mentioned, the Government does not collect comprehensive information about claimants in

¹ Source: <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/rel/pop-estimate/population-estimates-for-uk--england-and-wales--scotland-and-northern-ireland/mid-2014/rft--mid-2014-population-estimates-analysis-tool.zip>

² These figures are for ages 30-50 as opposed to the CRU age band of 31-50

³ These figures are for 20-30 as opposed to the CRU age band of 18-30

relation to protected characteristics. This limits our understanding of the potential equality impacts of the proposals for reform. The comparator group used to identify differential impacts on age and sex is the general population of England and Wales. Whilst this comparator group is entirely appropriate and the best available, it may not entirely reflect the breakdown by age and sex of road users in England and Wales.

- 6.6. Overall, based on the available limited data, we do not consider that the over-representation of male claimants, or claimants between the ages of 18-50, are likely to result in any suffering of a disadvantage from the proposals. If, however, there were to be any difference in treatment between those sharing a protected characteristic and those who do not, that would result in a disadvantage. It is the Government's assessment that the proposals represent a proportionate means of achieving the legitimate aims of the policy to disincentivise minor, exaggerated and fraudulent claims and reduce the number and cost of claims and their impact on motor insurance premiums. It is anticipated that the package of measures developed by the Government will have the biggest impact on lower value less meritorious cases. In these instances, claimants may be less likely to suffer from a long-term disadvantage than claimants with a more severe injury. Therefore, the Government is of the opinion that the policy is proportionate.
- 6.7. Further data was sought through the consultation exercise and several anecdotal submissions were received – mainly from claimant representatives - which indicated an assumption that the rise in the small claims limit could lead to people with protected characteristics potentially being discriminated against. This is because when taking forward a claim as a litigant in person they may need more support than those who do not share the protected characteristics. In particular, these respondents also highlighted concerns for claims involving minors, vulnerable persons including those where English is not their first language or who may have learning difficulties as well as potential litigants who are not able to use IT systems to progress their claim without help. In developing the new system to support the rise in the small claims track, the Government will be working with interested parties from across the personal injury sector, including from advice agencies, to ensure reasonable adjustments are made to support such claimants.

7. Discrimination arising from disability and a duty to make reasonable adjustments

- 7.1. We will continue to make reasonable adjustments to ensure access to justice for claimants and court users with disabilities. As mentioned earlier, the characteristics of claimants who register a personal injury claim in relation to disability are not centrally recorded. It is possible that claimants pursuing a personal injury claim may be more likely to suffer from long term disability because of the accident that is the subject of their claim, when compared to the population as a whole. However, the package of measures will have the biggest impact on lower value and often less meritorious cases, where claimants are much less likely to suffer from a related long-term disability than claimants with a more severe injury. Therefore, the Government believes the policy is proportionate for its aims (see 6.6 above).
- 7.2. The Government is working with experts and interested parties to develop the system to support the rise in the small claims track and, in particular, claimants who may take forward claims without legal representation and who may have a protected characteristic, including those with learning disabilities or mental health conditions. As stated above, the policy is targeted equally at all claimants regardless of any protected characteristics but we recognise

that increasing the small claims track without reasonable adjustments may impact on certain claimants with protected characteristics.

- 7.3. The Government is therefore working to ensure such reasonable adjustments are made to support litigants in person. Whilst it is important to be clear that the rise in the small claims track does not preclude claimants from seeking legal representation, it does however mean that the costs of the legal representation cannot be recovered from the defendant. The court has a responsibility to make sure that all parties, irrespective of whether they have representation, fully understand the process, that the proceedings are fair, and that if claims are particularly complex, claimants can apply to the court for the claim to be heard in the fast track where legal costs remain recoverable.
- 7.4. The Government is also working with the relevant interested parties to ensure that users who have difficulty engaging with digital services are provided with appropriate support designed to prevent them from being excluded, and enable them to understand the simplified process and secure access to justice.

8. Harassment and victimisation

- 8.1. The Government does not consider there to be a risk of harassment or victimisation to those with protected characteristics as a result of the implementation of these proposals.

9. Advancing equality of opportunity

- 9.1. Consideration has been given to how these proposals impact on the duty to have due regard to the need to advance equality of opportunity; by removing or minimising disadvantages suffered by people due to their protected characteristics; by taking steps to meet the needs of people with protected characteristics where those needs might be different to those without protected characteristics; and by encouraging people with protected characteristics to participate in public life.
- 9.2. The Government will work with key stakeholders from across the personal injury sector, including interested advice agencies, to develop a system that will provide the necessary support for court users pursuing a claim through the small claims court as a litigant in person. This will include greater use of assisted digital support measures, the use of which help ensure access to justice is maintained for all claimants. The mitigations below may also be of relevance to advancing equality of opportunity.

10. Fostering good relations

- 10.1. The Government considers that it is unlikely that these proposals will have a particular impact on fostering good relations between people with protected characteristics and those without protected characteristics.

11. Mitigation

- 11.1. The reforms will mean that a proportionate level of compensation will be paid to all claimants with whiplash injuries, and that those claims must be supported by medical evidence obtained from an accredited medical expert. They will also mean that unnecessary costs will be reduced because of raising the small claims track limits for RTA related personal injury claims from £1,000 to £5,000 and for all other personal injury claims from £1,000 to £2,000.
- 11.2. The Government acknowledges that comprehensive information about claimants generally – and specifically those involved in personal injury claims – in relation to protected characteristics is not routinely collected, other than for sex and age. This limits understanding of the potential equality impacts of these reforms. However, the reforms are targeted at all claims regardless of protected characteristics and the Government is taking action to ensure that reasonable adjustments are made for claimants, such as minors or those with disabilities, and that appropriate support is available for such claimants in the small claims track.
- 11.3. It is anticipated that the measures will have a neutral impact on genuine claimants with protected characteristics who seek to bring a whiplash claim or who seek to progress a personal injury claim through the revised small claims process. The Government will monitor the impact of the reforms following implementation and will make any further adjustments as necessary to ensure that access to justice is maintained. We will continue to assess the equalities impacts of these proposals in the light of any relevant new data.