

Equalities Statement

Policy Summary

This Equalities Statement has been written to be read alongside the consultation 'Proposals for changes to fixed recoverable costs (FRC) in civil litigation' to which this statement is an Annex.

Whilst the substantive scheme is explained within the Consultation Document, the broad proposed changes are:

- (i) FRC should be extended across the fast track (claims up to £25k damages where the trial will last no longer than one day)
- (ii) a new process and set of FRC for noise-induced hearing loss claims
- (iii) extend FRC for 'intermediate cases' (simpler cases in the £25k - £100k damages bracket, to be heard in the county court)

Equality Duties

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).

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.

Summary

Consideration has been given to the likely impact of the proposed changes to FRC on court users against the statutory obligations under the Act. The FRC proposals will also affect claims that do not go to court, but we do not have data on the characteristics of these cases. Based on the limited data available, we do not consider the proposals are likely to result in any unlawful discrimination for civil court users. We also consider it likely that the proposals may be of benefit, and therefore could advance equality of opportunity, for some clients with protected characteristics who are over-represented amongst civil court users. The consultation asks two equalities questions to test our assumptions and seek further evidence of equalities impact from respondents. We will update our equality considerations in light of the consultation responses.

Direct discrimination

Our initial assessment is that the proposals are not directly discriminatory as they will apply equally to all court users. We do not consider that the proposals would result in people being treated less favourably because of any protected characteristic.

Indirect discrimination

Our initial assessment is that the proposals are not likely to result in any unlawful indirect discrimination. Whilst we recognise that some civil court clients are likely to be over-represented when compared to the general population, we do not think that anyone will suffer a particular disadvantage as a consequence of this.

The data is taken from the 2015/16 civil court user survey, and is included in table 1 below. Please note, this data is for 2015/16 and the characteristics of court users may have changed since then, however this is the most recent data available. In addition, this data is for all users of the country courts, and the FRC proposals will only affect claims in the fast track which do not currently have FRC, and some of the claims in the multi-track.

i. Race

Individuals from Black Asian and Minority Ethnic (BAME) backgrounds are over-represented amongst lawyers working in law firms compared to the BAME UK workforce. The Solicitors Regulation Authority 2017 survey¹, which has a very high response rate, suggests there has been an increase in (BAME) lawyers working in law firms, now one in five lawyers. This is up 7%, from 14% in 2014 to 21% in 2017. In 2015, 11% of the UK workforce were BAME.²

These groups are therefore more likely to be affected by the changes to FRC. The accompanying IA assumes an overall net reduction in legal fees per case as a result of these proposals. However, the impact would vary for different solicitors depending in their cases and current costs, and lawyers may reduce resource spent on cases/find efficiencies to maintain current profit margins. We do not consider this potential impact on BAME lawyers would result in unlawful indirect discrimination since we do not believe anyone would be likely to suffer a particular disadvantage. We also consider the changes to be a proportionate means of achieving the legitimate aim of extending FRC across fast track claims and intermediate cases,

ii. Sex

Male court users are over-represented among the affected groups when compared to all adults aged 16 and over, and so would be disproportionately affected by changes to fixed recoverable costs.

iii. Age

Individuals aged between 45 and 74 years old are also over-represented among civil court users, and so will be disproportionately affected by changes to fixed recoverable costs.

iv. Disability

Discrimination arising from disability and duty to make reasonable adjustments

We do not consider that the proposals are likely to result in any discrimination for clients with disabilities. We will continue to ensure that reasonable adjustments are made for civil court users with disabilities.

The proposal is to introduce a new pre-litigation process involving greater transparency between the parties for the more straightforward majority of noise induced hearing loss

¹ <http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page>

² Labour Force Survey 2015

(NIHL) claims. We believe this will make the process more streamlined and accessible for people with disability.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

Advancing equality of opportunity

Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of court users who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic.

The FRC proposals aim to keep the costs of civil litigation proportionate and increase access to justice for everyone involved as a civil client. We therefore consider it likely that the proposals may be of benefit, and therefore could advance equality of opportunity for some clients with protected characteristics who are over-represented amongst civil court users as indicated above.

Fostering good relations

Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposals.

Table 1: Data from the 2015/16 Civil Court User Survey

	Claim type			All claimants %	All adults (population) [†] %
	Specified money %	Unspecified money %	Possession/ rent arrears %		
Gender					
Male	62	55	55	56	47
Female	38	45	45	44	53
Age					
16 to 24	2	3	*	2	15
25 to 34	12	17	11	15	15
35 to 44	18	20	18	20	18
45 to 54	25	25	21	25	17
55 to 64	23	18	28	20	15
65 to 74	15	12	19	14	11
75 and over	5	5	3	5	9
Highest qualifications					
Degree level or above	41	25	45	32	
A-level	11	11	16	13	
GCSE Grades A-C/O-levels	20	25	19	24	
Other qualification	18	17	14	16	
No formal qualifications	10	22	5	15	
Married or co-habiting					
Yes	66	69	74	68	58
No	34	31	26	32	42
Dependent children					
Any aged < 16	30	39	30	35	43
Any aged 16-18 in FTE	9	12	7	10	
None	66	57	68	69	61
Ethnicity					
White	86	78	69	80	90
Asian/Asian British	7	16	18	14	5
Black/Black British	4	3	9	4	2
Mixed/Chinese/Other	3	3	4	3	3
<i>Bases: All claimants</i>					
Gender	1,455	412	204	2,105	
Age	1,456	409	204	2,101	
Qualifications	1,409	404	200	2,045	
Cohabitation	1,444	412	200	2,090	
Dependent children	1,433	406	198	2,070	
Ethnicity	1,384	398	197	2,009	

Source: Civil Court User Survey 2014/15 – Individual claims

[†] Ethnicity, marital status, age from <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-289713> ; Dependent children from http://www.ons.gov.uk/ons/dcp171778_332633.pdf