

Annex C – Equality Statement

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- 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).

We have considered the impact of the proposed provisions on those with protected characteristics in line with the Equality Act 2010.

Summary

The Ministry of Justice has carefully considered responses to its consultation proposals. We have decided not to take forward a dedicated Mesothelioma Pre-Action Protocol supported by a fixed recoverable costs regime, because there was not a strong enough case that the proposals as consulted upon would meet the Government's declared aim of ensuring that mesothelioma compensation claims are settled quickly - where necessary - and fairly. In light of our consultation response, the ABI will wish to reconsider the final consultation proposal, an electronic Secure Mesothelioma Claims Gateway, which they had proposed to host and fund. We will work closely with interested parties, including victims support groups, to explore ways to improve the compensation claims process.

We consider the proposal to apply sections 44 (conditional fee agreements: success fees) and 46 (recovery of insurance premiums by the way of costs) of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 ('the LASPO reforms') as likely to have a broadly neutral to beneficial impact on mesothelioma victims, who (because of their condition) could be considered to have a disability under the 2010 Act. The LASPO reforms are considered in detail in Part 7 of this document.

Mesothelioma claimants will still continue to benefit from the Royal Courts of Justice specialist mesothelioma procedure (set out in Practice Direction 3D) under the management of Senior Master Whitaker, which addresses the particular need for swift management of such claims in the light of the claimant's very limited life expectancy following diagnosis.

Also these claims will still be subject to the Pre-Action Protocol for Disease and Illness (DPAP) which includes specific guidance relating to the pre-court procedure for mesothelioma claims and impresses upon parties the need for urgency in locating relevant information required to process a claim.

For victims of mesothelioma and their dependants who are unable to trace a liable employer, or liable Employer's Liability insurer, from which to claim damages, the Government is creating a compulsory payment scheme through the Mesothelioma Act

2014. This is an important milestone in ensuring that those who were previously unable to claim are able to do so once the payment scheme is up and running. The Mesothelioma Act provisions are relevant to the timing of the commencement of the LASPO reforms to diffuse mesothelioma claims, since the Government has always intended to implement any such decision in a synchronised manner with other reforms directed to improving the position of mesothelioma sufferers.

Direct discrimination

Since we do not consider the proposals would result in people being treated less favourably because of a protected characteristic, we do not think there is any direct discrimination through introducing the LASPO reforms.

Indirect discrimination

We do not consider the proposals will put anyone with a protected characteristic at a particular disadvantage compared to those who do not share the protected characteristic. We therefore do not consider that they are likely to result in indirect discrimination. The LASPO reforms apply to all other personal injury cases. Personal injury cases cover a very large range of injuries with differing circumstances and features, including very severe cases. We have no evidence of a specific feature of mesothelioma litigation which requires a different approach to the application of the LASPO reforms compared to other personal injury cases. Mesothelioma cases do require specific action relating to the speed of certain aspects of the procedure in the light of the limited lifespan of sufferers once diagnosed. Claimants can access such arrangements through the Royal Courts of Justice specialist mesothelioma procedure. However, the LASPO reforms concern the funding and costs of proceedings rather than the claims process.

Duty to make reasonable adjustments

As indicated above, we have no evidence to suggest that mesothelioma cases have features requiring a different approach to the LASPO reforms compared to other personal injury cases. In relation to the speed of litigation concerning mesothelioma sufferers, the fast track process will remain in place to help facilitate early resolution of liability, so that claims are settled as effectively as possible.

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 victims, legal professionals or defendants with protected characteristics. We will work closely with all interested parties, including victims support groups, to explore additional steps that can be taken to improve the mesothelioma claims process further.

Fostering good relations

The nature of the proposals to apply the LASPO reforms to mesothelioma cases is such that this objective is not particularly engaged.

Analysis of equality impacts

The individuals potentially impacted by the LASPO reforms include mesothelioma victims (and their dependants), legal professionals engaged in this area of work and defendants (insurers).

Impact on mesothelioma victims:

Data on the protected characteristics of mesothelioma victims is limited to gender and age. We have, for the purposes of this assessment, assumed that all those with a diagnosis could be considered to have a disability under the 2010 Act. Survey data from the National Institute of Economic and Social Research (NIESR) show that sufferers are predominately male and aged over 65 years (with a mean age of 71 years). It should be noted the NIESR survey aligns with the CRU database to ensure the sample is representative. We do not, however, have data on general damages and so are unable to assess to what degree age affects general damages in relation to the 10% uplift. We acknowledge that we do not collect comprehensive information about court users generally, and specifically about those involved in mesothelioma cases, in relation to other protected characteristics.

In 2010-11, we consulted on proposals¹ including a package of balancing measures designed to assist claimants and ensure access to justice in the new regime. These measures included: a 10% increase in general damages; qualified one way costs shifting (QOCS) to control the costs that a claimant might have to pay to a winning defendant; and a cap on the amount of damages which can be paid as a success fee of 25% of damages excluding damages for future care or future loss (which are specifically protected).

We will monitor the impact of the measures in line with our commitment to review the impact of the reforms in the LASPO Act 2012 within three to five years of implementation.

The current evidence does not show that mesothelioma claimants would be generally worse off under the LASPO reforms. However, we acknowledge that there may be some individuals who are worse off under the reforms as there will be those who benefit. In the absence of further data we are unable to say anything more about which protected characteristics will be affected and how.

We acknowledge that due to the terminal nature of a mesothelioma diagnosis, any policy change will likely have an impact on claimants' dependants. We therefore assume that spouses/partners (who are more likely to be female) and children (who are more likely to be under 65 years) will be affected to some extent by the policy in the same manner as individual claimants are, as described above.

Impact on legal professionals

There is no comprehensive data source from which the protected characteristics of legal professionals working on mesothelioma claims can be identified. We are

¹ *Proposals for Reform of Civil Litigation Funding and Costs in England and Wales: Implementation of Lord Justice Jackson's Recommendations*

therefore unable to make a comprehensive assessment of the likely equality impacts on this group. However, on the basis of limited evidence, we do not consider that the proposals will have significant differential impacts on impacted professionals according to their protected characteristics.

Impact on Defendants (Insurers)

There is no comprehensive data source relating to the protected characteristics of insurers covering mesothelioma claims. We are therefore unable to make a comprehensive assessment of the likely equality impacts on this group.

Mitigation and Justification

The only proposals now being taken forward are the LASPO reforms (see Part 7 of this document, where the details are set out).

As mentioned above, the current evidence does not show that claimants would be generally worse off under the reforms. However, we acknowledge that some individual claimants may be worse off under these reforms. In the absence of further data we are unable to say anything more about which protected characteristics will be affected and how.

Overall, we consider the proposals are likely to have a broadly neutral to beneficial impact on mesothelioma victims. The LASPO reforms will bring mesothelioma claims in line with other personal injury cases, to which the reforms already apply. That said, we will monitor the impact of the measures in line with our commitment to review the impact of the reforms in the LASPO Act 2012 within three to five years of implementation.