



## Equality Statement – Mesothelioma

Having due regard to our responsibilities under the Equality Act 2010<sup>1</sup> we have considered the likely impacts of our proposals on individuals with protected characteristics.

### Description of policy change

On 18 December 2012, Helen Grant, Parliamentary Under-Secretary of State for Justice, announced that the Ministry of Justice will consult on a package of reforms to improve and speed up the procedures governing mesothelioma claims. The focus is on expediting the pre-litigation process for mesothelioma claims.

The consultation proposals include:

- Introducing a dedicated Mesothelioma Pre-Action Protocol (MPAP), supported by an industry-provided electronic information gateway; this aims to complement the successful Royal Courts of Justice specialist mesothelioma litigation practice and establish a standard process within set timescales.
- Developing a fixed recoverable costs (FRC) regime for mesothelioma claims to accompany the MPAP. We are consulting on both the principle and structure of such a regime.
- A review of the impact on mesothelioma claims of the conditional fee agreement (CFA), as required by section 48 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). While the Government has implemented, from 1 April 2013, reforms to the 'no win no fee' system for personal injury cases, mesothelioma cases are currently exempt from these reforms until the issue is reviewed.

### Summary

It is anticipated that the proposals will have a positive impact on mesothelioma victims, who could be considered to have a disability under the 2010 Act and who are mainly men aged 65 and over. The proposals may have direct or indirect impact on

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<sup>1</sup> Under section 149 of the Equality Act 2010, the Department has a legal duty 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 protected characteristic and those who do not); and foster good relations between different groups. Having 'due regard' needs to be considered against the nine 'protected characteristics' under the Equality Act 2010.

other groups including legal professionals and defendants. A specific equalities question has been included in the consultation aimed at understanding more about the potential equalities impacts of these proposals and we will update this assessment in the Government response.

### **Analysis of equality impacts**

Secondary analysis on the interim dataset from the National Institute of Economic and Social Research (NIESR) shows that around 50% of mesothelioma claims take over 12 months from when the claimant first lodges a claim with a defendant (insurer) to the date of the settlement<sup>2</sup>. Given the aggressive nature of the disease, this means that sufferers often die before their claims are paid out. The Government is concerned about the length of time it currently takes to pay out compensation to sufferers. The proposals in the consultation look to increase the pace and improve the efficiency of the claims process so that early and fair payment of compensation is made for all mesothelioma sufferers and their dependents. Responses to the consultation will provide us with a better understanding on the measures and incentives needed for more relatively straightforward cases, where liability is not an issue, which can be dealt with pre-litigation.

As detailed in the accompanying Impact Assessment (IA), the individuals potentially impacted by proposals include mesothelioma victims (and their dependants), legal professionals engaged in this area of work and defendants (insurers).

#### Impact on mesothelioma victims:

The proposals are intended to aid quicker case resolution and reduce time to settlement and thereby compensation award. Victims may benefit from earlier interim payments as well as from greater transparency, better knowledge of the stages of the claims procedure and more assurance that their claim is being handled effectively. It is therefore anticipated the impacts on mesothelioma victims, where liability is not an issue, will be positive.

The Impact Assessment (page 8) outlines the potential risk on claimant settlement times that might arise for claims, where liability is an issue, which initially use the MPAP and then find it is necessary to issue court proceedings, when beforehand they would have issued court proceedings from the outset.

#### Justification

This risk is not expected to materialise as there is no particular reason why the reforms should change claimant lawyers' ability to select the right resolution route. Furthermore court cases involve initial case management activities, which are proposed to be more efficiently undertaken under the MPAP. As such the MPAP might support litigation activity where this is required, without necessarily increasing total settlement times.

Data on the protected characteristics of mesothelioma victims is limited. 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 NIESR

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<sup>2</sup> Secondary analysis on the interim dataset supplied by NIESR (England and Wales)

shows that sufferers are predominately male and aged over 65 years<sup>3</sup>. It should be noted the published NIESR study aligns with the Compensation Recovery Unit database to ensure the sample is representative. There is little available information relating to other protected characteristics.

It is therefore considered that the proposals will have greater positive impacts in absolute terms on men and those aged 65 years and older (as well as those with a disability related to their diagnosis). Analysis from the NIESR survey shows settlement levels reduce with age, i.e. the older a mesothelioma victim, the lower the settlement level<sup>4</sup>. Whilst the reforms should affect all age groups by the same relative amount, in absolute terms this would be worth more to younger claimants as their settlements levels are greater. However, there is no evidence to suggest that the proposals will impact on those claimants who do not share these characteristics any differently to those that do.

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 (who are more likely to be female) and children (who are more likely to be under 65 years) may also benefit from the policy.

#### Impact on legal professionals

The IA (at pages 7 to 11) identifies the risk that claimant lawyers undertake less mesothelioma cases as they seek lower cost cases and avoid more complex cases whose higher costs would not be covered by the Fixed Recoverable Costs regime.

#### Justification

In aggregate the introduction of fixed fees is assumed not to affect profitability (defined as the percentage mark-up of underlying costs of handling mesothelioma claims). Instead the proposed reforms should lead to claimant lawyers allocating less overall resource to mesothelioma claims, and instead devoting this resource to other profitable activity, with adjustment costs. These other business activities are assumed to be equally as profitable as dealing with mesothelioma claims.

There is no comprehensive data source from which the protected characteristics of legal professionals working on mesothelioma claims can be identified. We are 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 legal professionals according to their protected characteristics. We invite the provision of further evidence during the consultation to help us develop this assessment.

#### Impact on Defendants (Insurers)

Defendants are invariably insurers rather than employers or individuals. Insurers are likely to gain from paying reduced claimant solicitor costs (which they are liable for in cases which the claimant wins) and from their own reduced costs of defending a

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<sup>3</sup> Study into average civil compensation in mesothelioma cases: statistical note  
[http://statistics.dwp.gov.uk/asd/asd1/adhoc\\_analysis/2013/20130501\\_NIESR\\_Meso\\_Statistical\\_Report\\_FINAL.pdf](http://statistics.dwp.gov.uk/asd/asd1/adhoc_analysis/2013/20130501_NIESR_Meso_Statistical_Report_FINAL.pdf)

<sup>4</sup> Study into average civil compensation in mesothelioma cases: statistical note  
[http://statistics.dwp.gov.uk/asd/asd1/adhoc\\_analysis/2013/20130501\\_NIESR\\_Meso\\_Statistical\\_Report\\_FINAL.pdf](http://statistics.dwp.gov.uk/asd/asd1/adhoc_analysis/2013/20130501_NIESR_Meso_Statistical_Report_FINAL.pdf)

claim. There is no comprehensive data source relating to the protected characteristics of insurers covering mesothelioma claims.

Justification

We do not consider that there are likely to be any significant adverse differential impacts on insurers according to the protected characteristics. We invite the provision of further evidence during the consultation to help us develop this assessment.