

## Equality Impact Assessment Initial Screening - Whiplash Policy Changes - Relevance to Equality Duties

This EIA has been used to identify likely impacts on:

- disability
- race
- sex
- gender reassignment
- age
- religion or belief
- sexual orientation
- pregnancy and maternity
- marriage and civil partnership

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

### **Reducing the number and costs of whiplash claims**

Concerns have been raised that the current process for claiming for whiplash injuries following a road traffic accident (RTA) may allow a large number of unnecessary and less meritorious claims. In turn this may be pushing up the cost of motor insurance for all drivers. In recent years the number of personal injury (PI) claims made for whiplash cases has increased substantially whilst, over the same period, the number of RTAs has been falling. Government intervention is required as the proposed changes to the process for claiming for whiplash injuries require court rule changes.

Whiplash is a complex issue but the Government is committed to working urgently with the insurance industry and other stakeholders on proposals for tackling exaggerated and fraudulent whiplash claims. The Ministry of Justice has committed to identify measures for consideration and to implement changes to reduce the number and cost of whiplash claims. However it is also important to stress that we are also committed to ensuring that people who have suffered a genuine neck injury, should continue to be able to get appropriate compensation.

The two measures being considered are:

1. *Independent medical panels.* Under current arrangements, claimants can go to their own GP, or to a doctor recommended by their claims management company, to seek medical confirmation that they are suffering, or have suffered, from a whiplash injury. If insurance companies decide to contest the claim, they need to obtain their own medical advice. MoJ are consulting on a proposal to establish a system of medical panels which would assess the claims objectively and provide advice, using a standard pro-forma to describe the nature of the injury and the prognosis, which would be available equally to claimants, insurance companies and the courts. Two alternative models are proposed, one involving accreditation of interested providers, and the other a procurement exercise resulting in a call-off contract for a limited number of national or regional providers. The consultation seeks views on how such a system should best be funded so as to achieve the policy objectives without requiring public funding.

2. *Raising the small claims threshold in RTA personal injury claims.* The Ministry of Justice is consulting on raising the small claims track limit to £5,000, either with regard to all personal injury claims or only for whiplash claims.

An increase in the small claims limit has the potential to allow the majority of low value RTA claims, a large number of which relate to whiplash, to be heard in the small claims track, which is intended for low value claims and self-represented litigants, rather than in the fast track as at present. The costs involved in fast track cases mean that it is generally cheaper for the insurer to settle a claim pursued via that route than defend it in court. Allowing the case to be heard in the small claims court would consequently significantly reduce the costs, making challenging claims more economically viable.

The small claims track is one of three case management “tracks” to which defended civil claims in the county courts are allocated by the court. The other tracks are the fast track and the multi-track. The decision as to which track to allocate a case to rests with the judiciary and is made on the basis of the value of the case and its complexity. Rules relating to recoverable costs for the small claims track differ from those of the fast track (where the general rule that costs follow the event is applied and the winning side is generally able to recover its costs from the losing side). Because the small claims track is intended to be simple and low-cost, the costs in the small claims track which may be recovered from the other side are strictly limited and the court may only award fixed costs in limited circumstances. Any equality impacts will result from any potential adjustment of the threshold to encompass a greater number of low value personal injury claims/whiplash claims, and any adjustments in the protected characteristics of both represented and unrepresented claimants.

Our aim is also to continue to provide access to justice and ensure that victims of negligence receive fair compensation, whilst balancing the high cost of pursuing these claims, which is a cost that society bears through higher insurance premiums (which the changes would seek to reduce).

2. Individual Officer(s) & unit responsible for completing the Equality Impact Assessment.

Michael Anima-Shaun – Civil Justice and Legal Services

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
<p>To identify options and implement changes to reduce the number and cost of whiplash claims.</p> <p>To reduce the cost of contesting RTA personal injury claims through court.</p> <p>To discourage people from bringing less meritorious RTA personal injury claims or from making exaggerated claims.</p> <p>To consult publicly on a range of options for providing independent medical advice to courts and for increasing the current small claims threshold in personal injury (whiplash) claims.</p>	<ul style="list-style-type: none"> <li>• Introduce a system where low value personal injury claims, particularly whiplash claims are resolved in a way that is simple, straightforward, accessible and proportionate to their value.</li> <li>• Create a system where insurers find it economically viable to challenge low value personal injury claims such as whiplash.</li> <li>• Contribute to the Government commitment to helping bring down the cost of motor insurance premiums.</li> </ul>

4. What existing sources of information will you use to help you identify the likely equality impacts on different groups of people?

*(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings, submissions or business reports, comparative policies from external sources and other Government Departments).*

As set out in the Impact Assessment, we anticipate the impact of our proposals to be as follows:

1. Independent medical panels - we anticipate that there might be a reduced volume of initial claims and also that there might be a reduced proportion of positive diagnoses in relation to claims which are still made, including diagnoses which are associated with exaggerated claims. The extent of any reductions is unknown. This will be considered further over the consultation period and also in light of any evidence generated through consultation.

We also anticipate that the income from assessing whiplash claims will be generated from a smaller number of providers. The degree of this concentration will depend on the precise model chosen.

2. Increasing the threshold for small claims in personal injury cases – depending on the option pursued, we anticipate the impact will be that either simple higher value (up to £5,000) RTA personal injury claims, the majority of which will be whiplash related, will fall within the small claims track, or that solely RTA whiplash claims would.

Given that in the small claims track the costs that can be recovered are strictly limited the proposal could lead to successful parties, whether claimants or defendants, being worse off.

Raising the small claims track limit for RTA PI claims (a substantial proportion of which relate to whiplash) might raise a risk around 'equality of arms'. Under the small claims track a claim for injury following a RTA will usually be brought by an individual seeking compensation for alleged injury from another driver's insurer. Given the limits on cost recovery, the claimant is more likely to be self-represented under the small claims track than the Fast Track, and therefore they may either not pursue valid claims or may accept offers that represent less than full compensation. It is also possible that victims may undervalue their claims and be disadvantaged accordingly in negotiations with defendants who may continue to utilise legal representation resulting in an "inequality of arms" between claimants and defendants. Any equality impacts will be driven by the potential reductions in access to justice to claimants with limited or no legal representation, plus the characteristics of PI claimants

As a result of the proposals, legal services providers and claims management companies may face a reduction in demand for their services as the small claims track requires fewer legal resources than the fast track. It is possible that increasing the small claims track limit for RTA PI would result in a loss of business, which for some legal providers, might be the majority of business, for some legal service providers. These providers might need to make significant reductions in staff or potentially close down their businesses. The extent to which these providers would be able to replace this business with other sources of work is unknown. Before-the-event insurers are more likely to face an increase in costs, which may be passed on to consumers through higher BTE insurance premiums [DN: can you explain why?]. After-the-event insurers would also face a cost associated with a reduction in demand due to small claims costs rules.

We have considered evidence in response to a previous Government consultation in 2007 on case track limits in personal injury claims when the threshold was kept at £1,000. Evidence and data has also been considered from a wide range of sources including the House of Commons Transport Committee reports on the cost of motor insurance, Claims Management Regulation: Impact of Regulation Third Year Assessment (2010), the Compensation Recovery Unit (DWP), representations from the Association of Personal Insurance Lawyers and the Association of British Insurers and other sources.

#### **Evidence of impacts on claimants**

The Compensation Recovery Unit (CRU, part of the Department for Work and Pensions), record both

the age and sex of claimants in RTA PI claims. In 2011/12 approximately 90% of these claims were described by the CRU as whiplash injuries (identified by the injury description showing whiplash, neck injury or back injury). Therefore data on RTA claims generally provide an indication of the profile of whiplash claimants in terms of age and gender.

Table 1 (annexed to this screening document) shows that men accounted for 59 per cent of RTA claims in the three financial years to April 2012 (England and Wales). Men are therefore over-represented amongst RTA claimants when compared to the general population (49 per cent), and may therefore be differentially impacted by the proposals. Table 2 (annexed to this screening document) shows that those aged between 17 and 44 years old account for 67 per cent of RTA claimants over the same period. This age-group are over-represented in comparison with the general population (38 per cent) and may therefore be differentially affected by the proposals. Those in the 17-24 age group (20 per cent of claimants compared with 11 per cent for the population) and the 25-34 age group (26 per cent compared with 13 per cent respectively) are particularly over-represented in comparison with the general population. RTA claimants can be passengers as well as drivers and therefore a proportion of claimants (8 per cent) are younger than the legal driving age of England and Wales.

### **Evidence of impacts on legal services providers, claims management companies (CMCs) and medical professionals**

In addition to differential impacts amongst claimants, there may also be differential impacts amongst those working in this area of law. The Claims Management Regulation Annual Report 2010/11 shows that PI is the largest sector Claims Management Companies (CMCs) operate in, with 65% of CMC business (based on turnover) generated from this area.

A 2009 diversity survey<sup>1</sup> undertaken by the Claims Management Regulation Unit indicates that of those running CMCs (i.e. Directors) 51% are White British (compared to 84% of the adult population of England and Wales<sup>2</sup>), 28% are Pakistani (compared to 1.6% of the same comparator population) and the remaining fifth are made up of a variety of ethnic backgrounds including 6% Indian (2.7% of the comparator population) 5% Other White, 4% Other Ethnic Group, 3% Bangladeshi (0.6% of the comparator population) and 3% Other Asian. Certain ethnicities are therefore over-represented compared to the population as a whole, most notably those of Pakistani ethnicity. The survey also indicates that Directors of CMCs are more likely to be aged between 25 and 34 years old than in the general adult population of England and Wales (33% of Directors who responded compared with 17% of the comparator population<sup>3</sup>), and more likely to be male (84 per cent of respondents compared with 49 per cent of the population<sup>4</sup>).

This evidence suggests that there is potential for the proposed measures to have a differential impact on CMCs in relation to race, age and sex. In terms of disability, 1% of CMC respondents confirmed 'that the business employed staff with a disability that would affect how they interact with us (the Regulator)'. This has to be treated with care but indicates that potential impacts are larger in absolute terms on non-disabled CMC staff.

We are not aware of any sources of information about possible differential impacts resulting from measure 1 on those providing medical assessments. In the medical workforce as a whole, doctors of ethnic minority backgrounds tend to be over-represented compared to the national UK population<sup>5</sup>. At this stage the ethnic composition of the proposed independent medical panels is unknown and so there is no reason to suppose that doctors of particular ethnic groups are more or less likely to be successful in obtaining accreditation or in winning a call-off contract under the alternative tendering arrangements.

<sup>1</sup> The survey was completed by 1,609 firms

<sup>2</sup> Population Estimates by Ethnic Group, Office for National Statistics, 2011

<sup>3</sup> Mid 2010 Population Estimates, Office for National Statistics

<sup>4</sup> *Ibid*

<sup>5</sup> General Medical Council (2011) *The state of medical education and practice in the U.K* London: GMC

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people? If so what are the gaps in the information and how and when do you plan to collect additional information?

*Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.*

#### **Data on claimants**

There are limitations to the data sources presented in section 4. Data on RTA PI claimants is not exclusive to whiplash injuries (though c.90 per cent of claims were described by the CRU as whiplash injuries), and is limited to just two of the nine protected characteristics (age and sex). With the existing information, we are able to identify that affected claimants are more often male and/or aged between 17 and 44 years (compared to the general population).

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 both entirely appropriate and the best available, it may not entirely reflect the breakdown by age and sex of road users in England and Wales, the population from which RTA claimants are drawn.

The impact assessment that accompanies this EIA assumes that claimants without before the event (BTE) insurance for legal expenses will be subject to the greatest impact of these reforms. This is because they may now be liable for legal costs should their claims be contested. Whilst the current BTE insurance market has been noted to be 'geared towards high income earners'<sup>6</sup>, we are unable to identify how the protected characteristics are dispersed across those without BTE insurance and identify additional differential impacts as a result.

We have been unable to identify further data on the characteristics of claimants and defendants in personal injury cases or of the doctors who assess their claims, and the extent to which they would be affected by any of the changes proposed in the consultation document. Without this information it is not possible to fully assess the likely impact of the proposed changes on different groups of people.

#### **Data on legal services providers and claims management companies (CMCs).**

Data on the characteristics of CMC directors is limited to director-level only (as opposed to all those working in the industry), and it is not clear how many CMCs work directly in whiplash claims.

It is not known how many cases are likely to be affected, how legal representation will be affected, and how SME law firms, who might practice in this area, will be affected. The consultation exercise seeks to gain feedback as to what the likely impacts are to claimants, claimants' representatives and defendants, and doctors involved in assessing claims, including whether there are likely to be any adverse impacts on the protected equality groups and SMEs.

We also plan to undertake additional analytical work over the consultation period, which will explore the feasibility of reviewing datasets that potentially include settlement information. Possible sources of data include the Association of British Insurers, Association of Personal Injury Lawyers, and Health Service Litigation Authorities. Should appropriate data be accessible, we will attempt secondary analysis to see if this can inform our understanding of the impact of a change in the small claims threshold for personal injury claims.

We will also consider options for more proactive engagement with equalities stakeholders. These approaches may secure views from a wider spectrum of stakeholders than relying upon formal written consultation responses alone. Such work may include telephone or face-to-face interviews with individuals from law firms, insurance companies and organisations representing the industry.

<sup>6</sup> Bello, L. (2011) *In case of emergency: Consumer analysis of legal expenses insurance* London: Consumer Focus

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of which benefits from the positive impacts and the evidence and analysis used to identify them.

The proposals aim to deliver long term change by deterring fraudulent or marginal claims; by reducing the potential for pressure to be placed on doctors to give a particular diagnosis; and by allowing the majority of whiplash claims to be heard in the small claims track, rather than in the fast track as at present. The costs involved in fast track cases may mean that it is generally cheaper for the insurer to settle a claim than to defend it in court. Allowing the case to be heard in the small claims court would significantly reduce the costs, making challenging claims more economically viable for insurers and reducing costs overall. Insurers are committed to passing any savings on to customers.

The 2010 National Travel Survey<sup>7</sup> found that 80% of men and 66% of women in Great Britain (aged 17 years or older) were full car driving license holders. The survey also found that those aged between 30 and 59 (between 81 and 84 per cent of those surveyed) were most likely to be license holders. Therefore both men and those aged between 30 and 59 may be more likely to benefit from the anticipated reduction in car insurance premiums.

We will be looking at the consultation responses and information obtained from other sources to identify any additional potential positive equality impacts.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

We will be seeking information through the consultation about different groups of drivers who might stand to benefit more than others as a result of a reduction in insurance premia.

We are aware that the impact of the proposals under measure 2 could have different outcomes for different groups of claimant depending on the nature of the claim itself. It follows that different groups with protected characteristics may also be affected differently. We are seeking consultation responses and information from other sources about potential equalities impacts for all options.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

As previously mentioned equalities data on the characteristics of whiplash claimants and defendants is not routinely collected. However, existing data indicates that claimants may be differentially impacted in respect of age and sex, with males and those aged between 17 and 44 over-represented amongst RTA personal injury claimants when compared to the general population. In addition, the available evidence suggests some BME groups - most notably those of Pakistani ethnicity - are over-represented amongst CMC directors, and are therefore likely to be potentially adversely impacted by the proposals in terms of income from whiplash cases. If there is a strong concentration of assessment work into a relatively small number of providers, it is possible that, locally, the ethnic composition of the doctors carrying out assessments may not match the ethnic composition of the claimants as closely as it does under current arrangements.

---

<sup>7</sup> Department for Transport, 2011

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

As discussed above the current available equalities data of claimants and defendants is limited. In theory, the outcome could be that the threshold remains at the current level, in which case there would be no equality impacts, although we do not expect this to be the case. If the threshold is raised, we think it unlikely that there will be no equality impacts, but will be looking at the consultation responses and information from other sources to consider further the equalities impacts.

10. Is a full Equality Impact Assessment Required? Yes  No

If you answered 'No', please explain below why not?

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

We will carry out a full Equality Impact Assessment after consultation responses have been received.

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

N/A

12. Name of Senior Manager and date approved

**Name (must be grade 5 or above):** Abigail Plenty

**Department:** Civil Justice and Legal Services

**Date:** 30 August 2012

Note: The EIA should be sent **by email to [analyticalservices@justice.gsi.gov.uk](mailto:analyticalservices@justice.gsi.gov.uk) of the Equality Analytical Programme for publication.**

## Annex – Data from Compensation Recovery Unit

**Table 1:** Age of motor liability accident claimants in claims registered by the Compensation Recovery Unit (CRU) between the 1st April 2009 - 31st March 2012, by financial year and with population comparison.

Year	Age of claimants							Total
	0-16 years	17-24 years	25-34 years	35-44 years	45-54 years	55-64 years	65 years and older	
2009/10	7%	21%	27%	21%	14%	7%	4%	645,700
2010/11	8%	20%	26%	21%	14%	7%	4%	761,100
2011/12	9%	20%	26%	20%	14%	7%	4%	794,400
<i>Total</i>	8%	20%	26%	21%	14%	7%	4%	2,201,200
<b>England and Wales population</b>	20%	11%	13%	14%	14%	12%	17%	55,241,000

**Source:** Compensation Recovery Unit

**Source for population data:** Mid 2010 Population estimates, ONS

**Notes:** Figures for claimants have been rounded to the nearest 100 and so totals may differ from the sum of presented row values. Data on claims are drawn from a live administrative dataset where figures for a given period are liable to change through the life of a claim. As a result figures may not always reconcile with other figures published or issued from this source. Data extracted June 2012.

**Table 2:** Sex of motor liability accident claimants in claims registered by the Compensation Recovery Unit (CRU) between the 1st April 2009 - 31st March 2012, by financial year and with population comparison.

Year	Sex of claimants		Total
	Female	Male	
2009/10	42%	58%	645,300
2010/11	41%	59%	760,600
2011/12	41%	59%	793,900
<i>Total</i>	41%	59%	2,199,700
<b>England and Wales population</b>	51%	49%	55,241,000

**Source:** Compensation Recovery Unit

**Source for population data:** Mid 2010 Population estimates, ONS

**Notes:** Calculated from total where sex was not known in <1% (n=1,500) of recorded claims. Figures for claimants have been rounded to the nearest 100 and so totals may differ from the sum of presented row values. Data on claims are drawn from a live administrative dataset where figures for a given period are liable to change through the life of a claim. As a result figures may not always reconcile with other figures published or issued from this source. Data extracted June 2012.