



# EQUALITY IMPACT ASSESSMENT (EqIA)

## Summary results of the EqIA

### **Title of policy/practice/process/service:**

A&A: distinct matters (criminal).

### **Is the policy new (proposed), a revision to an existing policy or a review of current policy?**

Review of current policy.

### **Key findings from this assessment (or reason why an EqIA is not required):**

The key finding is that the current policy does not explicitly take equalities issues into account, but also that there do not appear to be any equality implications in relation to the current policy position. The factors involved in our policy appear to be neutral from an equalities perspective. We note there is currently limited data available in this area and would wish to gather further evidence, including via consultation, to increase confidence in our assessment.

### **Summary of actions taken because of this assessment:**

Further evidence to be extracted and analysed internally, and views to be sought externally on any potential equalities implications we may be unaware of.

### **Ongoing actions beyond implementation include:**

Not yet relevant.

### **Lead person(s) for this assessment (job title and department only):**

Policy and Research Analyst, in conjunction with Head of Criminal Legal Assistance.

### **Senior responsible owner agreement that the policy has been fully assessed against the needs of the general duty (job title only):**

Director of Operations.

### **Publication date (for completion by Communications):**

25/06/2024

Document control		
Document control:		A&A: distinct matters (criminal) v0.3
Date policy live from:		Live
Review cycle:		Every three years
Document change log		
Version/Author	Date	Comment
V0.1	November 2022	First draft as considered by GALA Review Group
V0.2	February 2024	Section 3 following consultation
V0.3	April 2024	Finalised clean version

## Step 1 - Framing the planned change

*Discussing step 1 and step 2 with the Policy Officer (Equalities) at an early stage will help identify appropriate evidence. This may include support from the wider Policy and Development team.*

### **1.1 Briefly describe the aims, objectives and purpose of the policy/practice/process/service. You can use the information in your project specification, business case etc.**

SLAB's policy on distinct matters in criminal A&A operationalises the requirements of the relevant Regulation, that is Regulation 8 of the Advice and Assistance (Scotland) Regulations 1996. The purpose of a policy statement is to identify a test to be undertaken by decision-makers: in this case, whether the solicitor has confirmed that the advice is criminal in nature; whether the advice relates to one or more distinct matters, and as a matter of policy, whether the solicitor has dealt with multiple matters in line with our policy on number of grants to be made. Section D of the policy statement is set out below, for reference.

“Our view is that there are three parts to this policy, which are taken in turn below.

#### ***Is it a criminal matter?***

In line with Regulation 8(2)(a), when providing criminal advice and assistance the solicitor is firstly to determine whether the matter on which advice is sought is criminal in nature. Our policy is that our published list of category codes must be used to do this, with the solicitor selecting a code from the list to reflect the content of the advice being given and providing additional details as to subject matter: this act confirms that the advice is criminal in nature. Where we become aware that an incorrect category code has been used e.g. where the matter is actually civil rather than criminal A&A, or the wrong criminal category code has been used, we will reject such a grant.

#### ***Is it a distinct matter?***

With regards to Regulation 8(2)(b) and the requirement that the solicitor is to determine that the advice and assistance relates to one or more distinct matters, our policy is that if there is a relevant criminal category code **and** the matter is being prosecuted separately to others, then the matter is distinct.

Our policy is that by selecting a category code and setting out the issues on which advice is given, as well as providing the relevant Procurator Fiscal reference number, each grant made by the solicitor will reflect their determination as to whether the advice being given is on a distinct matter.

### ***Multiple matters***

Our policy is that in terms of how multiple matters are to be dealt with in terms of the number of grants that should be submitted, the key consideration that should determine the number of A&A grants is how the Crown has raised the proceedings.

If the Crown has raised separate complaints, with separate PF reference numbers, we would expect the associated matters to be dealt with under separate grants.

If the Crown has bundled multiple matters under a single complaint (and PF reference), we would expect the matters to be dealt with under a single grant of A&A.

Where advice is being sought on a variety of subject matters but *before* any criminal complaint(s) have been served, our policy is that if the charges are of a similar nature or otherwise appear to be linked, then these should all be covered by a single grant, unless there are materially different circumstances surrounding the various instances and thus the advice to be given will be different.

If multiple grants were made where a single grant should have been submitted (or vice versa) we may reject these.”

### **1.2 Why is the change required? *Legislative, routine review etc.***

No change: this is a routine review of policy.

### **1.3 Who is affected by this policy/practice/process/service? *Be clear about who the ‘customer’ is.***

The ultimate customer is the client to whom legal services, which are supported through the Legal Aid Fund, are provided, though in this policy area the impacts of our position may be as likely to be felt by the solicitor. In particular, the policy sets the expectations and boundaries of how many grants we expect a solicitor to make which will have implications for payment. The policy does not affect the advice the assisted person will receive. Whilst solicitors work with the policies and guidance we develop and may, as in this area, be affected by the policy, this will not be in relation to their protected characteristics.

**1.4 Policy/practice/process/service implementation date?** *Project end date, date new legislation will take effect.*

Policy is currently in effect.

**1.5 What other SLAB policies or projects may be linked to or affected by changes to this policy/practice/process/service?**  
*The EqlA for related policies might help you understand potential impacts, and/or your findings might be relevant to share.*

The main related operational policies are those with regards to valid grants of advice and assistance.

## **Step 2: Consider the available evidence and data relevant to your policy/practice/process/service**

*The information you gather in this section will:*

- help you to understand the importance of your policy/practice/process/service for different equality groups,*
- inform the depth of equality impact assessment you need to do (this should be proportional to the potential impact on equality groups), and*
- provide justification and an audit trail behind your decisions, including where it is agreed an equality impact assessment is not required.*

**2.1 What information is available about the experience of each equality group in relation to this policy/practice/process/service?**

*Stay focused on the topic and scope of your policy/practice/process/service. Does the policy/practice/process/service relate to an area where there are already known inequalities? Refer to the EqlA guidance for sources of evidence.*

*Remember, this step in the EqlA process is NOT about the impact your policy has on equality groups and what we need to do to mitigate those. That assessment is done under Step 4.*

*Note: If you proceed to a full EqlA you should continue to add to this section as you develop the policy/practice/process/service, come across new evidence and/or undertake a consultation.*

### **Cross-cutting considerations**

The profile of applicants to the Legal Aid Fund is patterned by protected characteristics within different aid types and by case categories within those aid types. However, we have no control over who applies to the Fund, which operates on eligibility

rather than entitlement basis. Solicitors are the key intermediaries who decide which clients and cases they take on. The aggregate position of who applies is the result of complex interactions between societal trends, changes in wider justice sector processes, individual firms' appetite to undertake legally aided work for a particular case or client, and the actual legal issue at play.

Some of the evidence is general in nature. There is little specific evidence we have been able to find which would tell us about the experiences of different protected characteristic groups with regards to, for example, the numbers of separate or linked criminal legal matters applicants may be involved in, or how often solicitors representing applicants from particular protected characteristic backgrounds are asked to revise the way in which they have dealt with multiple matters.

Equality characteristics	Evidence source (web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/practice/process/service? Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).														
Age	(1) Internal SLAB data, 21-22	<div><p>Criminal A&amp;A by age, 2021-22</p><table border="1"><thead><tr><th>Age Band</th><th>Proportion (%)</th></tr></thead><tbody><tr><td>&lt;=24</td><td>21.00</td></tr><tr><td>25-34</td><td>35.00</td></tr><tr><td>35-44</td><td>30.00</td></tr><tr><td>45-54</td><td>16.00</td></tr><tr><td>55-64</td><td>7.00</td></tr><tr><td>65+</td><td>2.00</td></tr></tbody></table></div> <p>The table above sets out the proportions of criminal A&amp;A applicants by age bands. This is general data included for context, rather than specific to this policy. (1)</p>	Age Band	Proportion (%)	<=24	21.00	25-34	35.00	35-44	30.00	45-54	16.00	55-64	7.00	65+	2.00
Age Band	Proportion (%)															
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45-54	16.00															
55-64	7.00															
65+	2.00															

Equality characteristics	Evidence source (web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/practice/process/service? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>
Disability		No evidence found.
Race		
Sex	(1) Internal SLAB data, 21-22	In 21-22, 79% of persons who applied for A&A were male; 19% were female; and for 2% no data was collected. (1) Note: this is general data included for context, rather than specific to this policy.
Gender Reassignment		No evidence found.
Sexual orientation		
Religion or Belief		
Pregnancy or maternity		
Marriage/civil partnership		
Care Experienced (corporate parenting duty)		

## 2.2 Using the information above and your knowledge of the policy/practice/process/service, summarise your overall assessment of how important and relevant the policy/practice/process/service is likely to be for equality groups.

This policy is not an in/out point determining eligibility, though it will affect every criminal A&A case. The potential impact of our policy on how multiple matters are to be dealt with includes the number of contributions an assisted person may be liable for: the more grants submitted, the greater the number of potential contributions.

As reflected by table 2.1, we have been unable to find internal or external evidence on the relevance of this policy for equality groups, and whether there is likely to be any differential outcomes patterned by protected characteristics.

It appears unlikely, however, that an applicant's protected characteristics are likely to have any bearing on our decision-making in this area. In relation to basic determinations as to whether advice is distinct or not, and whether it is criminal in nature, these are essentially administrative processes (that is, selection of a category code) on which equalities are unlikely to have any bearing. As noted above, in the context of criminal legal issues, we are not currently aware of any evidence suggesting that the applicants from particular equality groups are more or less likely to have multiple legal matters, and whether multiple matters are likely to be linked or not. In any case, the protected characteristics of an applicant should have no bearing on how we expect solicitors to approach the task of deciding how many grants to submit the matters under. This is driven primarily by the number of individual Procurator Fiscal reference numbers, which in turn will tend to reflect the subject matters of the charges.

Overall, our position is that whilst it appears unlikely that negative equality outcomes could arise because of this policy, the lack of current evidence in this area means we cannot at present be clear as to whether this policy is of relevance or important to any or all the equality groups.

### **2.3 Outcome of step 2 and next steps. Complete the table below to inform the next stage of the EqIA process.**

*Consult with the project group and/or Corporate Policy Officer (Equalities) on completing this section.*

<b>Outcome of Step 2 following initial evidence gathering and relevance to equality characteristics</b>	<b>Yes/ No (Y or N)</b>	<b>Next steps</b>
There is no relevance to equality or our corporate parenting duties	N	Proceed to Step 5: agree with decision makers that no EqIA is required based on current evidence
There is relevance to some or all the equality groups and/or our corporate parenting duties	N	Proceed to Step 3: complete full EqIA
It is unclear if there is relevance to some or all the equality groups and/or our corporate parenting duties	Y	Proceed to Step 3: complete full EqIA



### Step 3 - stakeholder involvement and consultation

*This step will help you to address any gaps in evidence identified in Step 2. Speaking to people who will be affected by your policy/practice/process/service can help clarify the impact it will have on different equality groups.*

**Remember that sufficient evidence is required for you to show ‘due regard’ to the likely or actual impact of your policy/practice/process/service on equality groups. An inadequate analysis in an assessment may mean failure to meet the general duty.**

*The Policy and Development team can help to identify appropriate ways to engage with external groups or to undertake research to fill evidence gaps.*

#### **3.1 Do you/did you have any consultation or involvement planned for this policy/practice/process service?**

Yes.

#### **3.2 List all the stakeholder groups that you will talk to about this policy/practice/process/service.**

We published a consultation covering this policy area on our website, with responses open to all. A link to the consultation was also provided to all solicitors registered to provide legal aid as part of a broader mailshot to the profession.

#### **3.3 What did you learn from the consultation/involvement? *Remember to record relevant actions in the assessment action log.***

In autumn 2023, we undertook a public consultation concerning our policies on A&A and ABWOR. This included a specific question regarding the equalities implications of our policies. The consultation documents were publicly available on SLAB’s website. The consultation received three responses, all of which came from solicitor firms.

We note that whilst this particular policy fell within the scope of that consultation, none of the comments received were directly relevant to this policy area. As such, our assessment for the purposes of this EqlA has not changed following the consultation exercise.

## Step 4 - Impact on equality groups and steps to address these

You must consider the three aims of the general duty for each protected characteristic. The following questions will help:

- Is there potential for discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010? How will this be mitigated?
- Is there potential to advance equality of opportunity between people who share a characteristic and those who do not? How can this be achieved?
- Is there potential for developing good relations between people who share a relevant protected characteristic and those who do not? How can this be achieved?

### 4.1 Does the policy/practice/process/service have any impacts (whether intended or unintended, positive or negative) on any of the equality characteristics?

In the tables below, record the impact the policy/practice/process/service might have on each equality characteristic, as it is planned or as it operates, and describe what changes in policy/practice process/service or actions will be required to mitigate that impact. Copy any actions across to the project action log.

Cross-cutting: all protected characteristics	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	We acknowledge that at a societal level, some protected characteristic groups may be more or less likely to apply for A&A. However, we have no control over this and in individual cases, this societal fact has no bearing on our decision-making in relation to how we approach the tests at hand. As such, we do not believe there is any potential for discrimination here.
potential for developing good relations			X	
potential to advance equality of opportunity			X	The purpose of our policy on dealing with multiple matters is to encourage solicitors to deal with related matters under a single grant

				where possible. One impact of this will be to reduce the number of contributions which applicants with multiple matters are liable for. However, in the criminal context, it is not clear that number of matters is patterned by protected characteristics, and as such, the equalities implications of this policy are unclear. It is not clear than an alternative policy position would have a positive impact or that there are negative impacts that require to be mitigated.
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Age	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	As per the 'cross-cutting' table, above.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Sex	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	As per the 'cross-cutting' table, above.
potential for developing good relations			X	

potential to advance equality of opportunity			X	
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Disability	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	As per the 'cross-cutting' table, above.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Gender reassignment	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	The limited evidence for this protected characteristic does not highlight any potential differential impacts with regards to how this policy would be experienced.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Race	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your
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	Positive impacts	Negative impacts	No impact	justification to not make changes despite the potential for adverse impact.
potential for discrimination			X	As per the 'cross-cutting' table, above.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Religion or Belief	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	As per the 'cross-cutting' table, above.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Sexual Orientation	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	The limited evidence for this protected characteristic does not highlight any impact with regards to how this policy would be experienced.

potential for developing good relations			X	
potential to advance equality of opportunity			X	

Pregnancy & Maternity	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	The limited evidence for this protected characteristic does not highlight any impact with regards to how this policy would be experienced.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Marriage & Civil Partnership	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	Not relevant to be considered for this policy.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Care experienced young people	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	As per the 'cross-cutting' table, above.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

**4.2 Describe how the assessment so far might affect other areas of this policy/practice/process/service and/or project timeline?**

The assessment so far indicates that we have very limited evidence in this area as to the experience of equality groups.

A key further step should be to attempt to address the evidence gap, so that we might increase our confidence in our current conclusion that this policy area is not one in which equalities issues are engaged or where there are likely to be negative equality outcomes.

**4.3 Having considered the potential or actual impacts of your policy/practice/process/service on equality groups, you should now record the outcome of this assessment below.**

*Choose from one of the following (mark with an X or delete as appropriate):*

Please select (X)	Implications for the policy/practice/process/service
X	No major change

	Your assessment demonstrates that the policy/practice/process/service is robust. The evidence shows no potential for unlawful discrimination and that you have taken all opportunities to advance equality of opportunity and foster good relations, subject to continuing monitoring and review.
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## Step 5 - Discuss and review the assessment with decision makers and governance structures

*You must discuss the findings of this assessment with senior decision makers during the lifetime of the project/review and before you finalise the assessment. Relevant groups include, but are not limited to, a Project Board, Executive Team or Board members. EqIA should be on every project board agenda therefore only note dates where key decisions have been made (for example draft EqIA sign off, discussion about consultation response).*

### 5.1 Record details of the groups you report to about this policy/practice/process/service and impact assessment. Include the date you presented progress to each group and an extract from the minutes to reflect the discussion.

Discussions with key staff involved in making these decisions indicated that there is limited data currently available in relation to this decision set, and that the key element of the policy is around how multiple matters are dealt with, with other elements being largely administrative. It was suggested that equalities considerations are not relevant to the decision-making itself here, but that the impact of the policy could be positive in terms of avoiding multiple contributions for applicants. On other elements of the policy, such as the determination of whether something is distinct, this was not thought to be an area in which equalities considerations would arise.

## Step 6 - Post-implementation actions and monitoring impact

*There may be further actions or changes planned after the policy/practice/process/service is implemented and this assessment is signed off. It is important to continue to monitor the impact of your policy/practice/process/service on equality groups to ensure that your actual or likely impacts are those you recorded. This will also highlight any unforeseen impacts.*

### 6.1 Record any ongoing actions below.

*This can be copied from the project action log or elsewhere in this assessment and should include timescales and person/team responsible. If there are no outstanding items, please make this clear.*

No ongoing actions at present.



**6.2** Note here how you intend to monitor the impact of this policy/practice/process/service on equality groups. *In the table below you should:*

- *list the relevant measures,*
- *identify who or which team is responsible for implementing or monitoring any changes,*
- *identify where the measure will be reported to ensure any issues can be acted on as appropriate.*

Measure	Lead department/ individual	Reporting (where/ frequency)
<b>Internal data</b> Analysis showing number of applicants who have multiple matters by protected characteristic and subject matters; any rejections in relation to number of grants made.	<b>AMI (data extraction) with Policy (analysis)</b> Suggest this should be explored as part of business impact assessment regarding recording, and options for gathering this information in a manageable way.	Head of Criminal Legal Assistance (yearly).

**6.3** EqlA review date.

*This EqlA should be reviewed as part of the post-implementation review of the policy/practice/process/service. The date should not exceed three years from the policy/practice/process/service implementation date.*

02/11/2025.

## **Step 7 - Assessment sign off and approval**

*Once final consultation has been undertaken with Corporate Policy Officer (Equalities), all equality impact assessments must be signed off by the relevant Director or Senior Responsible Owner (SRO), even where an EqlA is not required. The Chief Executive must approve all equality impact assessments. Note the relevant dates here:*

**Director/SRO sign off:** 02/11/2022.

**Chief Executive approval:** 02/11/2022.

*All full equality impact assessments must be published on SLAB's website as early as possible after the decision is made to implement the policy, practice, process or service.*