



# EQUALITY IMPACT ASSESSMENT

## (EqIA)

### Summary results of the EqIA

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

Prior and retrospective approval: expert witnesses (civil legal aid).

#### **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):**

For the purposes of identifying the impact of this policy, we have undertaken an analysis of our available applications data, as well as a review of external evidence. For the limited number of protected characteristics for which we had applications data available, there was no indication that the policy has an adverse impact by protected characteristics.

Broader evidence, including from other jurisdictions confirms that expert witnesses may be relevant to particular protected characteristic groups. It also suggests that difficulties around expert witnesses may be caused by a lack of availability, or concerns around affordability (particularly where a system is capped) or late payment. However, we note that these concerns in large part simply do not apply to our current policy, or would arise because of external factors, rather than the operation of the policy under review here.

Our view is that in large part, although an applicant's protected characteristics may be directly relevant to seeking an expert witness, this is in the context of their needs within their particular legal case, and this is how our policy operates: the applicant's protected characteristics are relevant only insofar as they are relevant to how their request for a particular expert witness will e.g. advance the case. The degree of discretion available to us in this area means that we could have a stricter policy position which would create greater barriers to accessing expert witnesses; by not doing so, our view is that the current policy advances equality of opportunity across protected characteristics.

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

No specific actions following this impact assessment have been taken. We will however continue to gather and analyse data to monitor the impact of this policy.

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

Ongoing actions include the gathering and analysis of data in relation to this policy. We intend to continue monitoring the grant rate in relation to protected characteristics, to establish more information on the impact of this policy on assisted persons with equality related circumstances.

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

Head of Civil and Children's Legal Assistance.

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

Director of Operations.

<b>Publication date (for completion by Communications):</b>
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24/02/2026.
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## **Step 1: Scoping the work being assessed**

### **1.1. Briefly describe the aims, objectives and purpose of the policy/practice/process/service.**

SLAB's policy on prior and retrospective approval for expert witnesses sets out how SLAB operationalises the requirements of the relevant Regulations. The purpose of a policy statement is to identify a test to be undertaken by decision-makers: in this case, whether it is 'reasonable' that a request for the employment of an expert witness be granted. Section D of the policy statement is set out below, for reference.

*"For the purposes of this policy, SLAB's definition of expert witness is as follows:*

*'An expert witness is one whose role is to speak primarily to opinion evidence, rather than to evidence of fact alone, and who has the knowledge, professional skills, and qualifications which enable them to give such an opinion (and/or undertake relevant associated steps).'*

*"This definition does not cover witnesses as to fact generally, for whom SLAB's prior approval is not necessary.*

*"In assessing a request to approve use of an expert, we need to be satisfied that the use of the "expert" is reasonable in all the circumstances. SLAB will grant approval for the employment of an expert witness as reasonable where it is shown that the proposed expert has the necessary knowledge and experience; that their involvement may assist in advancing the case or its resolution; and that due regard to economy of litigation has been shown in the costs outlined.*

#### ***"What work is covered by a grant?***

*"SLAB's policy is that requests to employ expert witnesses must provide a fully itemised breakdown of the work proposed and likely costs. Any approval granted may include a condition that costs may not exceed a specified amount or that specified work may not be carried out.*

*"Where SLAB has provided approval for a report by an expert under a grant of civil legal aid, and the solicitor subsequently needs to cite that expert to give evidence in the court proceedings, a further application for approval is not required for these experts' associated costs.*

*"Where the work being undertaken appears likely to exceed the expenditure limit initially set by SLAB, a further application for approval must be submitted prior to the expenditure being incurred.*

### **“Retrospective requests for the approval of expert witnesses**

*For retrospective requests for experts, the first limb of the test (set out in the Regulation) is whether approval would have been granted had it been sought timeously. As stated in the parent policy statement, SLAB’s policy is to apply exactly the same test and factors to the request as if it had been received in time (i.e. those set out above).*

*“For the second limb, SLAB’s policy on ‘special reason’ is that where a solicitor can show that:*

- they were prevented from making a timeous application for prior approval by circumstances which were beyond their control and these circumstances were ones which could not have been reasonably foreseen; or*
- the circumstances were within the solicitor’s control, and ought to have been foreseen, but the oversight was nonetheless justifiable given the particular or unusual circumstances in which the expense was incurred,*

*“this will generally be accepted as a special reason for late submission of a request for an expert. SLAB’s policy is that the particular circumstances described must amount to more than simply plain oversight or ignorance of the Regulation to suffice as a ‘special reason’.”*

### **Why is the policy/practice/process/service being examined?**

Review of policy/process/service/practice.

### **1.2. Who is affected by this policy/practice/process/service?**

The customer for the purpose of this policy is the assisted person, whose case an expert witness is being asked to speak to, and have some sort of impact on the outcome. The extent to which assisted persons (and by connection, their solicitors) can employ expert witnesses will be affected by how SLAB sets policy in this area.

### **1.3. Policy/practice/process/service implementation date.**

Policy is live.

### **1.4. What other SLAB policies or projects may be linked or affected by changes to this policy/practice/process/service?**

There is a relationship between prior (or retrospective) approval for the employment of an expert witness, and the task undertaken by Accounts. There may also be implications for cost limit amends.

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

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

#### **General information about the policy/practice/process/service**

As set out in the section above, where our policy position is described, the key factors we consider in this policy include the extent to which the specific expert is qualified, how they will advance the case,

and due regard to economy. There is a vast array of possible expert types spanning a wide range of case types, some of which will involve the consideration of how a person's protected characteristics (not necessarily the applicant's) are relevant to the case, but many where protected characteristics are entirely irrelevant.

It is important to note that certain types of expert do not require our approval – that is, experts as to fact – whilst other third party outlays that may have an equalities relevance – in particular interpreters – also do not require prior approval under this policy. It is also important to note that the process of applying for approval for an expert witness is led by the solicitor, rather than primarily by the applicant themselves.

We anticipate that some case types are more likely than others to involve expert witnesses in the first place. There does appear to be a statistically significant relationship between case type (for example: contact, medical negligence, divorce) and the grant rate. There also appears to be a (predictable) relationship between the case type and the type of witnesses sought (for instance, child psychologists being prevalent in contact and residence cases, other medical witnesses being prevalent in medical negligence cases).

External sources indicate that expert evidence is almost always present in certain case types, for instance, claims for personal injury and clinical negligence (that is, cases which are likely to involve medical matters), in particular.<sup>1</sup> Finally, there also appears to be a statistically significant relationship between the amount (£) sought for the expert witness and the grant rate, which may reflect our policy position in relation to due regard to economy.

## Age

An assisted person's age (or potentially the age of another person involved in the proceedings) could be relevant for the purposes of some expert witnesses – including, for instance, where age intersects with disability in the context of adults with incapacity applications, or in relation to the use of child psychologists in family proceedings.

## Statistics

### • SLAB's data

SLAB's applicant surveys show that 5% of applicants for civil legal aid were 65 or over and 28% aged between 45 and 64.<sup>2</sup> SLAB's administrative data shows that 40% of civil legal aid applicants were aged 45+.<sup>3</sup>

Age band	% of total expert requests	% of civil legal aid applicants
<=24	17%	5%
25-34	21%	22%
35-44	26%	27%
45-54	20%	19%
55-64	9%	16%
65+	7%	10%

<sup>1</sup> Smith A. QC, Mackay I. QC, Martin-Brown J. (2016) [Expert Evidence Seminar](#).

<sup>2</sup> [SLAB's applicant surveys](#).

<sup>3</sup> SLAB administrative data.

The table above provides a breakdown of requests for expert witnesses by age bands and compares it against the age band profile of applicants for civil legal aid generally. (It is worth noting that a single applicant may make multiple requests for expert witnesses). The key difference is that younger applicants aged <=24 appear to be over-represented in terms of requests for expert witnesses, whilst older persons (age 55-64 and 65+) are under-represented compared to the general applicant profile.

Age band	Granted	Not granted (including, for example abandoned)
<=24	82%	18%
25-34	72%	28%
35-44	66%	34%
45-54	74%	26%
55-64	73%	27%
65+	78%	22%
<b>Overall</b>	<b>73%</b>	<b>27%</b>

The table above shows variation in the grant rate for expert witnesses by applicant age bands; whilst the grant rate for age <=24 is higher than the average, for applicants aged 35-44, it is comparatively low (with a gap of 16% between the two). There is a statistically significant difference in the grant rate by age bands.

In terms of types of experts sought, it is clear from the SLAB data that several relatively high-volume categories relate to age, in particular, requests for child psychologists were the third most common category of request for expert witness, whilst others included child welfare reporters, paediatricians and related medical professionals. More broadly, other expert witnesses included professionals in relation to contact centres and family mediation, where children would be involved. It is important to note that whilst the subject of the expert witness request may be a child (or an elderly person), the actual applicant themselves (who is the subject of this impact assessment) may not be.

- **Data relevant to the policy**

Age appears to have a close association with the type of expert evidence sought in civil legal aid. Children and young people are disproportionately represented in family proceedings, where child psychologists, psychiatrists, and social workers are among the most frequently requested experts. In terms of evidence from other jurisdictions, we note that evidence from the Working Group on Medical Experts in England and Wales reported that 92.5% of surveyed professionals (275 participants) had experienced a shortage of medical experts in family proceedings, with child and family psychiatrists among the most difficult to source.<sup>4</sup> We note the existence of this risk. However, it is not clear that the same difficulty applies in Scotland, where, as noted above, child psychologists (for instance) are amongst the most instructed expert witness.

For older applicants, expert reports may be required in relation to guardianship or intervention orders under the Adults with Incapacity (Scotland) Act 2000, where medical evidence of capacity is mandatory.<sup>5</sup> Older people are more likely to require geriatric assessments or evidence from consultants to support housing, care, or negligence claims.

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<sup>4</sup> [Working Group on Medical Experts \(2020\) – Final Report on Shortages of Experts in Family Courts.](#)

<sup>5</sup> [Law Society of Scotland \(2023\) – Adults with Incapacity Guidance.](#)

## Evidence on different age categories

No evidence found.

## Disability

There are various types of expert witnesses which may be used to speak directly to the nature or extent of an applicant's disability: for example, psychologists or medical professionals. Such expert input would be in the context of how the evidence being given is relevant to the legal issues at hand in the case.

Again, in terms of the possible relevance of this policy to disability, there are caselaw examples (from England and Wales) of experts being needed to substantiate medical/psychiatric information to support a defence against a claim of negligence.<sup>6</sup> In terms of the relevance of this policy, an applicant could be affected by a disability which they assert was caused by the defendant's actions, giving rise to the civil action. A person with a disability could also apply for an expert witness to support their defence to a claim of negligence or personal injury against them, in that their actions were affected by their disability. As such, **disability** can be an important aspect of civil proceedings, and one that may require addressing by an expert witness.

### Statistics

- **SLAB's data**

SLAB's applications data indicates that just over a third of requests for expert witnesses come from applicants who declared they have at least one disability. (It should be noted that the disclosure rate for this protected characteristic is slightly under 50%, however, which may obscure the true picture).

Disability status	Proportion of total requests for expert witnesses
At least one disability	35%
No disability	65%

Disability status	Granted	Not granted (including, for example abandoned)
At least one disability	82%	18%
No disability	65%	35%
<b>Overall</b>	<b>73%</b>	<b>27%</b>

The grant rate data by disability shows a clear distinction in outcomes, with applicants reporting at least one disability having a considerably higher grant rate than those who do not. Statistical significance testing confirms that (notwithstanding the limited disclosure rate) there **is** a statistically significant relationship between applicant disability and the grant rate for expert witnesses. SLAB's broader applicant surveys show that 52% of applicants for civil legal aid had a disability or limiting condition, 24% described it as a mental health problem and 25% as reduced physical capacity.<sup>7</sup>

- **Data relevant to the policy**

It may be relevant that 30% of applications received by SLAB for civil legal aid were about guardianship for adults with incapacity.<sup>8</sup>

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<sup>6</sup> [Dunnage v Randall – UK Insurance Ltd.](#)

<sup>7</sup> [SLAB's applicant surveys.](#)

<sup>8</sup> SLAB Annual reporting.

## **Evidence on different disabilities**

- **Physical disabilities**

In housing cases, evidence from occupational therapists, GPs, and other medical experts may be required to demonstrate disability-related needs, for instance with regards to physical accessibility. The Scottish Human Rights Commission reported that “disabled people in Scotland continue to face systemic obstacles in securing the evidence required to access adaptations or resist eviction, including barriers linked to the affordability and availability of expert testimony.”<sup>9</sup> However, this is not obviously supported by the application data tables above, which indicate a higher grant rate for persons with disabilities.

- **Learning disabilities**

Applicants with learning disabilities could feasibly require cognitive assessments, psychiatric input, or social work reports to establish capacity or support needs, which may require prior approval for an expert witness.

CELCIS research highlights that learning disability amongst children is under-recorded but that disabled children face higher risks of harm and involvement in child protection processes,<sup>10</sup> and this may suggest that this group could have a greater need for specialist assessments from experts as part of civil proceedings.

The ability to engage suitably qualified experts could be critical in these cases: as noted earlier, external literature from other jurisdictions notes risks linked to capped fees and shortages of specialists, which could limit access to appropriate expertise.<sup>11</sup>

However, SLAB’s current prior approval policy does not operate a capped fee system of the same kind, and wider issues of professional supply and accreditation fall outside SLAB’s control. At present, we are not aware of specific evidence that these risks are directly materialising in our own prior approval decisions, though they remain credible background risks that should be monitored.

- **Mental health**

Our applications data indicates that mental health could be seen as a leading driver of demand for expert reports, with request for psychologists and psychiatrists being particularly prevalent. We note that external research by Nicolson & Wheate<sup>12</sup> found that “psychiatric and psychological testimony is frequently contested for consistency and methodological rigour, creating additional barriers for those who most rely upon it” though our assessment is that conclusion relates to the treatment of expert evidence in the legal proceedings themselves, rather than the process of arranging access to an expert: whilst part of our policy does focus on the expert’s qualifications, as noted above, the data does not suggest particular barriers for applicants declaring a disability.

As noted above, a combination of cost pressures, reliability concerns, and supply shortages could in principle place applicants with mental health conditions at risk of being unable to secure the evidence needed to pursue or defend their case (though not necessarily more so than for other

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<sup>9</sup> [Scottish Human Rights Commission \(2024\) – State of the Nation Report.](#)

<sup>10</sup> [CELCIS \(2021\) – Are disabled children visible in Scotland’s children’s statistics?.](#)

<sup>11</sup> [Working Group on Medical Experts \(2020\) – Final Report on Shortages of Experts in Family Courts](#) and [Bond Solon Expert Witness Survey \(2023\), reported in Law Gazette – In Focus: Expert Witness Survey 2023.](#)

<sup>12</sup> [Nicolson & Wheate \(2020\) – Reliability of Expert Evidence.](#)

groups): however, to be clear, we are not aware of evidence that suggests these currently apply in relation to how our policy operates at present in the Scottish context.

## Sex

### Statistics

- **SLAB's data**

Sex	% of total sanction requests	% of total applicants
Female	54%	61%
Male	44%	39%
Prefer not to say	2%	N/A

The table above shows the breakdown of requests for expert prior approval by sex. Female applicants make most requests, and this is in line with the fact that female applicants also make up the majority of applications for civil legal aid – though male applicants make a slightly larger proportion of expert requests compared to their proportion of total applications.

Sex	Granted	No grant (including abandoned)
Female	73%	27%
Male	74%	26%
Prefer not to say	70%	30%

The table above shows the respective grant rates for expert witness requests by sex. The grant rate is very similar, suggesting no obvious differences in experience of this policy in relation to this protected characteristic. Statistical testing confirms that there is no statistically significant relationship between sex and grant rate.

Where 'prefer not to say' is excluded (to allow for enough cases for the analysis to be undertaken), there appears to be a statistically significant relationship between sex and case *type*; however, as noted above, that does not appear to have an impact on the comparative grant rates.

- **Data relevant to the policy**

Broader external evidence suggests that family and child law cases are among the civil proceedings most dependent on expert evidence. Judicial guidance in England and Wales makes clear that “psychological assessments are frequently central to safeguarding and decision-making in child protection and domestic abuse proceedings.”<sup>13</sup> Some external evidence not specific to Scotland suggests that women are disproportionately likely to be involved in these types of cases, particularly where domestic abuse is a factor, meaning potential barriers to accessing psychologists or psychiatrists could raise an equality concern with regards to sex.<sup>14</sup>

At the same time, as noted earlier, research from other jurisdictions indicates highlights risks around shortages of medical and psychological experts. A *Working Group on Medical Experts* survey (England & Wales) reported that 92.5% of 275 respondents had experienced shortages of medical experts in family cases, with child and family psychiatrists identified as especially difficult to source.<sup>15</sup> The Bond Solon Expert Witness Survey (2023) also shows that capped legal aid rates deter experts from taking

<sup>13</sup> [Judiciary of England and Wales \(2022\) – Psychologists as Expert Witnesses in the Family Courts: Guidance.](#)

<sup>14</sup> [Rights of Women \(2018\) – Domestic abuse, human rights and the family courts.](#)

<sup>15</sup> [Working Group on Medical Experts \(2020\) – Final Report on Shortages of Experts in Family Courts.](#)

instructions, with family law one of the hardest-hit areas.<sup>16</sup> Women in England and Wales are also disproportionately reliant on legal aid, suggesting the impact of any expert approval process may be particularly large on them.<sup>17</sup> If it were shown that women were disproportionately involved in such proceedings, and that our policy position contributed to such issues, this would indicate possible equality concerns. However, again, we are not sighted as to whether these issues exist (or exist to the same extent) in the Scottish context.

However, this evidence may provide useful context: if family proceedings are particularly sensitive to expert availability, any policy barrier in this area could have disproportionate impacts. However, we would also stress that there is likely to be a range of reasons for such shortages – for instance, training, pay, workforce capacity – and that where barriers exist, they may not necessarily form SLAB’s prior approval policy itself. Our policy may not be the driver, but it does operate within a system where these risks are already present, and that makes monitoring essential.

The external evidence also indicates that cost pressures specifically can create shortages. The Bond Solon Expert Witness Survey 2023 (E+W) found that medical experts charge an average of £165 per hour, with some specialties charging up to £279 per hour, while non-medical experts report fees ranging from £75 to £405 per hour.<sup>18</sup> These rates sit above the English and Welsh legal aid fee caps, explaining why many psychologists and psychiatrists, the experts most often required in family proceedings, are unwilling to accept instructions funded under legal aid. In the context of our specific policy at hand, though due regard to economy must be shown in the choice of expert, there are no specific caps on fee rates as part of our current policy, which may mitigate this potential issue somewhat.

### **Evidence on women**

Women are disproportionately applicants in domestic abuse and family proceedings. The Human Rights Consortium Scotland (2023) reported that “women are more likely to require access to safeguarding reports, psychological assessments, and social work input in family proceedings, and restrictions on expert evidence pose risks to the protection of their rights.”<sup>19</sup> Given both the reliance on psychological expertise in these cases, this policy will be of some importance. However, we are not currently aware of evidence that suggests our specific policy has created barriers that fall most heavily on women.

### **Evidence on men**

Men appear more frequently in other civil case types, such as housing disputes and personal injury, where medical experts (such as GPs, consultants) are typically required. However, there is no evidence of systematic differences in grant rates for expert approval by sex.

## **Race**

An assisted person’s race or national identity could be a relevant issue in relation to some requests for some expert witnesses. For example, country experts in the context of asylum cases, or cases involving an expert witness speaking to law in another country the applicant is associated with. However, these were very rare within the applications data. Again, our decision-making here would be

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<sup>16</sup> [Bond Solon Expert Witness Survey \(2023\), reported in Law Gazette – In Focus: Expert Witness Survey 2023.](#)

<sup>17</sup> [Our family justice system is still failing women – Law Gazette.](#)

<sup>18</sup> [Bond Solon Expert Witness Survey \(2023\), reported in Law Gazette – In Focus: Expert Witness Survey 2023.](#)

<sup>19</sup> [Human Rights Consortium Scotland \(2023\) – Lived Expertise in Access to Justice.](#)

in the context of how that evidence is relevant to legal issues at hand in the case, rather than reflecting the applicant’s race in and of itself.

### Statistics

- **SLAB’s data**

The following table gives a breakdown of expert prior approval requests by applicant ethnicity. However, it should be borne in mind that the disclosure rate is under 50%.

Applicant ethnicity	% of total requests for expert witnesses
White majority (Scottish, British and Irish)	53%
White minority	2%
Non-white ethnic minority	4%
Prefer not to say	41%

The rate of ‘prefer not to say’ is high and possibly obscures the true picture. Otherwise, the results for the two minority groups are not too dissimilar to those seen in the profile of applicants for civil legal aid in SLAB’s applicant surveys.

For civil legal aid, SLAB’s applicant surveys indicate that 87% of applicants were white (with 2% Polish and 3% other White) and 8% from other ethnic groups (2% any mixed or multiple ethnic groups, 2% African, Caribbean or Black).<sup>20</sup>

Applicant ethnicity	Granted	Not granted
White majority (Scottish, British and Irish)	70%	30%
White minority	46%	54%
Non-white ethnic minority	61%	39%
Prefer not to say	67%	33%
<b>Overall</b>	<b>72%</b>	<b>32%</b>

All three of the non-majority groups (if PNTS is included) have a grant rate below the average, for white minority applicants, particularly so. However, it must be borne in mind that the numbers involved, particularly for white minority applicants and for non-white ethnic minority applicants, are small. Despite the apparently large gaps, a statistical test indicates that there is **not** a statistically significant relationship between ethnicity and grant rate for expert witness requests. There appears to be a degree of variation in the case types involved by ethnicity, but we lack sufficient data to analyse this fully.

- **Data relevant to the policy**

We note that whilst certain types of proceedings may be more likely to require particular types of third party input, which may in turn have a link to applicant protected characteristics (for instance, immigration and asylum proceedings requiring interpreters), it is important to note that interpreters do not require approval under this policy, as they are not expert witnesses.

### Evidence on different ethnicities

We found external research from other jurisdictions which highlights that minority ethnic groups are more likely to face systemic disadvantage when expert evidence is required: the Council of Europe

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<sup>20</sup> [SLAB’s applicant surveys](#)

has reported that “*ethnic minority and migrant groups are more likely to require expert testimony to establish credibility, yet they are the groups least likely to access such expertise under capped-rate systems.*”<sup>21</sup> Again, given our policy on approvals for experts (and separately, our policy on payment) does not involve a system of caps, and the applications data above, our view is that this is a risk that has not been evidenced in the specific context at hand.

### ***Evidence on people whose first language is not English***

No evidence found.

## **Gender reassignment**

### ***Statistics***

- **SLAB’s data**

No evidence found.

- **Data relevant to the policy**

No evidence found.

### ***Evidence on trans people***

No evidence found.

## **Sexual orientation**

### ***Statistics***

- **SLAB’s data**

No evidence available.

- **Data relevant to the policy**

No evidence found.

### ***Evidence on gay men***

No evidence found.

### ***Evidence on gay women/lesbians***

No evidence found.

### ***Evidence on bisexual people***

No evidence found.

## **Religion or belief**

### ***Statistics***

- **SLAB’s data**

No evidence found.

- **Data relevant to the policy**

No evidence found.

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<sup>21</sup> [Council of Europe \(2021\) – Expert Witnesses and Legal Aid.](#)

## **Evidence on different religions**

No evidence found.

## **Pregnancy or maternity**

### **Statistics**

- **SLAB's data**

The applications data indicates that amongst requests for expert witnesses, there are several requests for midwives, obstetricians, and various paediatric professionals (around 6% of the total) suggesting that experts are being used in relation to pregnancy and maternity (again, this may not necessarily relate to the applicant themselves, however, as opposed to for example, other parties). The grant rate for these categories is very high, suggesting adverse impacts from our policy in relation to this protected characteristic are unlikely.

- **Data relevant to the policy**

Pregnancy and maternity are most relevant in medical negligence cases, particularly obstetric and perinatal claims, where specialist medical reports may be essential. Findings from England such that such reports are among the most expensive categories of expert evidence.<sup>22</sup> However, as noted above, our review of applications data indicates a high grant rate.

### **Evidence on pregnancy and maternity**

External evidence suggests there may be challenges around the reliability of medical expert witnesses. For example, research published in *The Lancet* noted concerns that clinicians acting as expert witnesses are not always adequately trained, with resulting risks to the quality of obstetric and neonatal evidence.<sup>23</sup> Our policy does include a specific factor on the expert's qualifications, which may help with regard to this risk – though this would generally be a matter for the court in the proceedings themselves. In that sense, the requirement that prior approval can only be granted where the proposed expert is appropriately qualified does provide a safeguard: it ensures applicants cannot secure funding for unqualified clinicians acting outside their expertise.

The Bond Solon Expert Witness Survey 2023 reported that *“the average hourly rate for medical experts was £165, with some specialties such as ENT reaching £279 per hour.”*<sup>24</sup> In a capped system, this could feasibility limit the availability of experts able to provide input relevant to this protected characteristic, but as noted previously, this is not a relevant consideration to our current position.

## **Marriage/civil partnership (only applies to policies related to employment)**

### **Statistics**

- **SLAB's data**

Not relevant.

- **Data relevant to the policy**

Not relevant.

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<sup>22</sup> [Ministry of Justice – Guidance on Remuneration of Clinical Negligence Experts: Schedule 5 of the Civil Legal Aid \(Remuneration\) Regulations, noting neonatologist/neurologist rates.](#)

<sup>23</sup> [Brown, H. \(2005\) for The Lancet –Clinician Expert Witnesses Take the Stand.](#)

<sup>24</sup> [Bond Solon Expert Witness Survey \(2023\), reported in Law Gazette – In Focus: Expert Witness Survey 2023.](#)

## *Evidence on marriage and civil partnership*

Not relevant.

## Care Experienced

### *Statistics*

- **SLAB's data**

In terms of our applications data, there was a disclosure rate of 44% in relation to this protected characteristic, and similarly to the data on race, there is a high rate of 'prefer not to say' amongst those who disclosed data in relation to this protected characteristic (57%); around 6% of the total applications for expert witnesses came from individuals who were either currently or previously looked after by a local authority, with the remaining 36% from those with no experience of care.

- **Data relevant to the policy**

The number of applications with disclosed data for this protected characteristic are too low to report on grant rate or differences by case type and expert types, given small cell counts for some groups.

### *Evidence on care experienced people*

No specific evidence was found that indicates there is a specific relevance of this policy on this protected characteristic that does not apply to other applicants more generally: however, it appears reasonable to assume that care experienced people are disproportionately involved in family law and child protection proceedings, where expert witnesses such as psychologists, psychiatrists, and social workers are commonly instructed.

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

The evidence set out above shows that expert witnesses are sought to speak to a range of issues that may be relevant to an applicant (or other party's) protected characteristics; requests to employ expert witnesses are particularly frequent in relation to psychologists, psychiatrists and other medical professionals, which suggests relevance to age and possibly disability. Overall, the grant rate is high; it must also be borne in mind that some refusals will occur simply because prior approval is not required in the first place, rather than on the substantive merits of the request.

Whilst the evidence gathered from SLAB's applications data indicates that the rate of grants/refusals for expert witnesses does vary by some equality characteristics (for example age and disability), our assessment is that this will be the result of interaction with the facts of individual cases, and to some extent case type. For example, certain case types may generally be considered to require more in the way of specific expert knowledge as a matter of course, and thus more likely to be granted an expert witness. We are confident that SLAB's decision-making here reflects the nature of the cases at hand and possibly the specific circumstances of the requests (such as comparative costs or expert qualifications), rather than the applicant's equality characteristics in themselves.

SLAB's policy on expert witnesses appears as though it may be particularly important for certain assisted persons from equality groups: particularly disability and possibly age, as set out in the table above. Whilst there are differential impacts for some groups (for example, within age) our view is that

these reflect the legitimate operation of our policy with regards to the role the expert is to play in a case, rather than an active decision based on the applicant's protected characteristics per se.

Finally, we note that the factors used (in particular, whether use of the expert is likely to advance the case) are broad enough to enable consideration in the context of any of the protected characteristic, even where we have not been able to find specific evidence. It should be borne in mind that the proportion of legal aid cases which involve the use of expert witnesses is less than half.

### **2.3. Outcome of Step 2 and next steps. Select the outcome below to inform the next stage of the EqIA process.**

**Please select your decision:**

Proceed to Step 3 - complete full EqIA.

**Please outline the reasoning behind your decision:**

It is clear from the evidence above that there is a potential nexus between expert witnesses and an applicant's protected characteristics, though in practice, the applicant's protected characteristics appear unlikely to have a significant impact on our decision-making. In any case, a full assessment is required.

## **Step 3: Stakeholder involvement and consultation**

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

No.

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

N/A.

### **3.3. What did you learn from the consultation/involvement?**

N/A.

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

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

#### **Cross-cutting**

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

***Describe the changes or actions 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.***

SLAB has very significant discretion in terms of its policy on prior approval for expert witnesses. Our view is that it would be open to us to have a policy position in which the requirements of applicants were higher (that is, a stricter policy). For instance, rather than requiring that an expert ‘may’ advance the case (per the current policy), it would be open to us to require that an expert ‘will’ or ‘must’ advance the case. Such a policy would likely make it more challenging for the test to be met, which in turn would mean that fewer grants for expert witnesses are made. Similarly, we could have a stricter policy with regards to the extent of work covered.

The evidence above indicates that there can be links between applicants, their protected characteristics, case types, and the need for expert witnesses (or varying sorts). As such, our view is that – given we have a policy that is more permissive than it might otherwise be – the current position is positive in terms of limiting barriers for equality groups, and as such, should be seen as advancing equality of opportunity. Moreover, the broadly framed factors are flexible enough to allow for a wide range of issues possibly relating to any of the protected characteristics to be considered.

On the other two arms of the PSED our assessment is that the current policy is neutral in its application, and that as such, no change is required.

## **Age**

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

***Describe the changes or actions 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.***

The policy is used to instruct experts who may be speaking to the relevance of an applicant (or other party’s) age in some circumstances – for instance, child psychologists and experts in relation to adults with incapacity cases.

Our view is that although there is a relationship between age and grant rate for expert witnesses, there are no changes required to our policy: the variation in grant rates by age is likely to reflect the nature of the cases typically pursued by applicants in different age groups and the extent to which requests experts can properly address the tests set out in our policy, rather than evidence of discriminatory outcomes relating to the protected characteristics themselves. For instance, applicants aged  $\leq 24$  being more likely to be involved in medical negligence cases, where the grant rate for expert witnesses is high, compared to persons aged 35-44 being more likely to be involved in e.g. contact cases, where the expert grant rate is much lower. As such, our view is that the current policy position is neutral with regards the potential for discrimination.

As noted above, in the ‘cross-cutting’ section, given we could have a stricter policy on approvals for experts and the factors set out are broad in nature, the current policy should be seen as advancing equality of opportunity, including for age.

## Disability

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

It is clear from reviewing the applications data that use of expert witnesses in relation to what could be considered applicants' disabilities is frequent: for instance, the instruction of psychiatrists and various types of medical experts. The data also indicates that applicants with disabilities are significantly more likely to be granted use of an expert witness than those who are not; this suggests that for applicants with disabilities, at least, our current policy position does not lead to adverse impacts but has a positive impact in which the bar to accessing expert witnesses is not unduly high.

Whilst we are aware of some external evidence suggesting there are particular systemic barriers for people with disabilities in arranging expert testimony, that does not appear to be clearly borne out by this data; more broadly, difficulties with the availability of expert witnesses cannot necessarily be seen as the result of our policy position rather than other external factors.

The points made in the 'cross-cutting' section above are applicable; SLAB's policy position will be positive in terms of its benefits to persons within this protected characteristic group, when compared to other possible policy positions. The fact that the factors set out in the policy are so broad provides flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## Sex

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

We note in section 2 that our applications data shows that whilst there does appear to be difference in the types of cases taken by men and women (and therefore likely in the types of witnesses required), there is no statistically significant difference in the grant rate for expert witnesses by sex. Therefore, it appears reasonable to assume no adverse impact relating to our decision-making under this policy. Whilst we found external evidence which suggests that expert witnesses may be particularly important in some cases in which women are more likely to be involved, and possibly more difficult to access, we are not currently aware of any specific instances in which our policy has resulted in a problematic barrier for women because of their protected characteristics.

The points made in the 'cross-cutting' section above are applicable; SLAB's policy position will be positive in terms of its benefits to persons within this protected characteristic group, when compared to other possible policy positions. The fact that the factors set out in the policy are so broad provides

flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## Race

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

We set out a range of evidence in relation to race in section 2, which indicates that there is no statistically significant difference in the grant rate, and therefore, it appears reasonable to assume no adverse impact relating to our decision-making under this policy. It is important to bear in mind that interpreters are not subject to our policy on expert witnesses, approval not being required.

Some external evidence from other jurisdictions suggests possible adverse impacts with regards the availability of expert witnesses where a system of payment for experts is capped; however, this does not apply in the Scottish context. The points made in the ‘cross-cutting’ section above are applicable; SLAB’s policy position will be positive in terms of its benefits to persons within this protected characteristic group, when compared to other possible policy positions. The fact that the factors set out in the policy are so broad provides flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## Gender reassignment

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

We did not find any evidence that indicated a specific relevance of expert witnesses with regards to this protected characteristic, or which suggests that applicants are more or less likely to seek and to be granted use of an expert witness depending on their gender reassignment status. However, nor are we aware of any current issues. There are no known adverse impacts to be mitigated.

The points made in the ‘cross-cutting’ section above are applicable; SLAB’s policy position will be positive in terms of its benefits to persons within this protected characteristic group, when compared to other possible policy positions. The fact that the factors set out in the policy are so broad provides flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## Sexual orientation

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

We did not find any evidence that indicated a specific relevance of expert witnesses with regards to applicants' sexual orientation, or which suggests that applicants from particular sexual orientations are more or less likely to seek and to be granted use of an expert witness. However, nor are we aware of any current issues. There are no known adverse impacts to be mitigated.

The points made in the 'cross-cutting' section above are applicable; SLAB's policy position will be positive in terms of its benefits to persons of different sexual orientations, when compared to other possible policy positions. The fact that the factors set out in the policy are so broad provides flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## Religion or Belief

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

We did not find any evidence that indicated a specific relevance of expert witnesses with regards to applicants' religion or belief, or which suggests that applicants from particular religious backgrounds are more or less likely to seek and to be granted use of an expert witness. However, nor are we aware of any current issues. There are no known adverse impacts to be mitigated.

The points made in the 'cross-cutting' section above are applicable; SLAB's policy position will be positive in terms of its benefits to persons from different religious/belief groups, when compared to other possible policy positions. The fact that the factors set out in the policy are so broad provides flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## Pregnancy & Maternity

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

As noted above, our assessment of the applications data suggests pregnancy/maternity may well be relevant in some requests for experts, given the nature of the experts requested; again, as noted

earlier, the grant rate for such experts is very high, suggesting there is no adverse impact of our policy which requires to be mitigated in relation to impacts on this protected characteristic group. Whilst external evidence from other jurisdictions indicates some possible potential difficulty with availability of medical witnesses, which may be of particular relevance to this protected characteristic, our assessment is that the relevant drivers do not currently exist in the Scottish context of our actual policy (for example, capped fees) or are not relevant to this specific policy (rather than for example, accounts policy). As such, we are not aware of any adverse impacts of our policy that require to be mitigated.

The points made in the ‘cross-cutting’ section above are applicable; SLAB’s policy position will be positive in terms of its benefits to persons regardless of their care experience status, when compared to other possible policy positions. The fact that the factors set out in the policy are so broad provides flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## **Marriage & Civil Partnership (only applies to policies related to employment)**

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** No impact.

*Describe the changes or actions 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.*

This protected characteristic is not relevant to our assessment of this operational decision-making policy.

## **Care experience**

**Potential for discrimination:** No impact.

**Potential for developing good relations:** No impact.

**Potential to advance equality:** Positive impact(s).

*Describe the changes or actions 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.*

As noted above, we found no specific evidence or data that allows us to see a clear linkage between applicants with this protected characteristics requests for expert witnesses, and grant rate. However, nor are we aware of any current issues. There are no known adverse impacts to be mitigated.

The points made in the ‘cross-cutting’ section above are applicable; SLAB’s policy position will be positive in terms of its benefits to persons regardless of their care experience status, when compared to other possible policy positions.

The fact that the factors set out in the policy are so broad provides flexibility to take a range of issues into account, possibly relating to any of the protected characteristics (where relevance is shown); again, advancing equality of opportunity.

## 4.2. Which actions have you taken as part of this assessment?

**Please select the outcome of the assessment:**

Confirm that the policy/practice/process/service described in section 1.1 was robust.

**Please explain the changes that have been made:**

Given the assessment above, our view is that no changes are required to this policy.

## Step 5: Discuss and review the assessment with decision makers and governance structures

### 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.

This assessment was discussed with and reviewed by key operational decision-makers and was discussed and agreed by senior staff at a meeting of the GALA Review Group on 20/01/2026.

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

### 6.1. Record any ongoing actions below

No relevant ongoing actions.

### 6.2. Note here how you intend to monitor the impact of this policy/practice/process/service on equality groups

Measure	Lead department or individual	Reporting (where and frequency)
Analysis of numbers of requests, grants and refusals for use of expert witnesses by assisted person protected characteristic, by case type if possible.	AMI (data extraction) with Policy (analysis)	Exec Team/Head of Civil Legal Assistance – annually

### 6.3. EqIA review date

*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 implementation date.*

26/01/2029.

## Step 7: Assessment sign off and approval

**Director/SRO sign off:** 26/01/2026.

**Chief Executive approval:** 26/01/2026.

*All full EqIAs must be published on SLAB's website as early as possible after the decision is made to implement the policy/practice/process/service.*