



EQUALITY IMPACT ASSESSMENT

(EqIA)

Summary results of the EqIA

Title of policy/practice/process/service:

Criminal legal aid: prior and retrospective approval for counsel.

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):

We have analysed the available internal applications data regarding requests for the approval of counsel in criminal legal aid. We acknowledge that the full range of protected characteristics are not covered. For those areas where data was available, our assessment is that the data does not show any detrimental impacts likely to arise as a direct result of our policy position: whilst there are differences in outcomes by sex, our view is that these do not arise directly as a result of the protected characteristic and should be seen as a justifiable outcome under this policy.

The assessment shows that protected characteristics – for example race and disability – may have a degree of relevance to requests for counsel, insofar as they may be relevant to the factors of complexity, sensitivity, and novelty.

We note that this is a technically specific element of the legal aid regime, with few parallels externally: as such, we have been unable to find external evidence relevant to a direct assessment of this policy position.

Summary of actions taken because of this assessment:

No actions required.

Ongoing actions beyond implementation include:

Continue gathering and analysing data for the purposes of monitoring of outcomes by protected characteristics; continue to seek external research or analysis that may assist in providing context for a future assessment.

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

Head of Criminal 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.

Publication date (for completion by Communications):

13/03/2026.

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 counsel sets out how SLAB operationalises the requirements of the relevant Regulation – Regulation 14 of the Criminal Legal Aid (Scotland) Regulations 1996. The purpose of a policy statement is to identify a test to be undertaken by decision-makers: in this case, whether it is 'appropriate' that a request for the employment of counsel be granted. Section D of the policy statement is set out below, for reference.

"Approval of counsel in the Sheriff Court

"Our policy is that it is appropriate that an assisted person shall be authorised the use of single junior counsel on satisfying SLAB as to one or more of the following factors:

- 1. the novelty and / or complexity of the case from a legal or evidential perspective;*
- 2. The occurrence of any unforeseen medical or personal emergency faced by the nominated solicitor where they are a sole practitioner, or where there is no other member of the solicitor's firm available to conduct the case which would otherwise prejudice the assisted person's case if counsel were not made available; or*
- 3. any relevant considerations of equality of arms.*

"Approval of counsel at the Petition stage in High Court proceedings

"Crown Office notify us of cases that have been identified as potential High Court proceedings. When we receive such notification, the solicitor is advised that automatic approval for the employment of junior counsel has been put in place without the need for our prior approval. Senior counsel will always need our prior approval for this stage of proceedings.

"Where counsel is automatically available under the terms of the Regulation, our policy is that only work which is appropriate for counsel to undertake is within the scope of the specific work that may be undertaken. This would not include counsel carrying out work that we would consider it more appropriate for the instructing solicitor to carry out.

"However, in a case identified as a High Court prosecution where there is any pre- indictment hearing calling in the sheriff court, our policy is that separate approval for counsel's attendance at such a diet will be required.

"Where a case that has been identified as a High Court prosecution is subsequently indicted in the sheriff court, our policy is that the solicitor will require separate approval for counsel's continued instruction.

“Applications for employment of senior counsel, more than one junior counsel and senior counsel acting alone

“Our policy is as above but that the use of multiple or senior counsel shall be authorised only where there are issues of exceptional novelty and / or complexity arising in the particular case.

“With regards to requests for senior counsel, our policy is that we will also take into account the gravity of the charges faced by the accused.

“Where the request is for multiple junior counsel (or senior and junior counsel), our policy is that a grant will be made where we are persuaded that the volume of productions or witnesses (or the number and nature of the charges faced by the accused) is such that the use of multiple counsel is appropriate for the proper conduct of the case.

“Where counsel is sought for non-advocacy work: for example, seeking counsel’s opinion

“Where a request is for limited use of counsel, the basic factors above will be considered: however, given that limited use of counsel is likely to be required at an earlier stage of the case, our policy here is that additional factors considered also include:

- Whether the request for counsel’s input appears premature
- Whether the limited use of counsel at the point may materially assist the client’s case or otherwise support early resolution of the case.

“Scope of prior approval

“Our policy is that where approval has been granted for counsel, it may be only for a particular purpose and limited to certain items of work. Where counsel is sought to undertake other steps, a further prior approval must be sought.

“When approval is granted for counsel to conduct the proceedings, that grant includes:

- Necessary consultations with the client
- Necessary notes (including an Opinion or substantive note on the line of evidence that is integral to the client’s defense)

“Our policy is that any consultation with an expert witness is not covered in the general grant of sanction for counsel. A separate sanction request must be made for any proposed consultation.

“Where approval is granted for counsel to conduct a trial in the sheriff or Justice of the Peace Court, our policy is that this does not include the conduct of hearings that are considered routine: again, a separate specific sanction request would be required here.

“For High Court proceedings, our policy is that when approval is granted for the employment of senior and junior counsel, or two junior counsel, this will cover all necessary consultations and the conduct of the trial.

“Retrospective approval: the ‘special reason’ test

“An applicant will be entitled to retrospective approval where the applicant the case meets the test for prior approval and is able show special reason for lateness. Special reason will be established where a solicitor can show that:

- they were prevented from making a prospective 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

“Our policy is that special reason is required to amount to more than simply plain oversight or ignorance of the Regulations to constitute a ‘special reason’.”

1.2. Why is the policy/practice/process/service being examined?

Review of policy/process/service/practice.

1.3. Who is affected by this policy/practice/process/service?

The customer for the purpose of this policy is the assisted person, whose case counsel is being asked to speak to. The extent to which assisted persons (and by connection, their solicitors) can employ counsel will be affected by how we set policy in this area.

1.4. Policy/practice/process/service implementation date.

Currently live.

1.5. 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 counsel, and the task undertaken by Accounts (see also specific policies on counsel’s fees).

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

In 2024-25, there were 4,224 requests for counsel, of which a large majority (76%) were for junior counsel only, with the next most frequent type of request being for both senior and junior counsel (12% of total requests).

Most requests for counsel were made for proceedings at solemn level (96%): relatively few requests are made for counsel for cases at summary level. Whilst a request for the approval of counsel was made in approximately 36% of solemn cases¹, a request for counsel was made in less than 1% of summary cases.

¹ Using a simple comparison of the number of requests for counsel against the number of grants for solemn/summary legal aid.

Overall, the grant rate for counsel was high, at 86%: 9% of requests were refused, and in 5% of cases, no decision was reached. The grant rate was considerably higher in solemn proceedings (86%) than in summary proceedings (72%). We anticipate this reflects differences in how (for example) complex or sensitive the relevant cases are, given the factors set out in our policy.

The profile of cases in which counsel was involved are set down below, demonstrating a degree of variation by procedure type: whilst the most common type of case which counsel is involved in was sexual offences at both summary and solemn level, otherwise, for solemn, the second most frequent case type was assault then culpable homicide/attempted murder, whilst for summary, it was extradition and then assault. For many case types, there were very few requests for counsel.

Case type	Criminal Solemn	Criminal Summary	Grand Total
Sexual offences	35.33%	28.35%	35.12%
Assault	14.35%	23.62%	14.63%
Murder/attempted murder/culpable homicide	13.32%	0.00%	12.91%
Offensive behaviour	10.76%	13.39%	10.84%
Drugs related matter	8.59%	0.79%	8.36%
Other	8.39%	7.09%	8.36%
Embezzlement/fraud	2.17%	0.79%	2.12%
Robbery	2.02%	0.00%	1.96%
Bail (including breach of bail)	1.62%	0.00%	1.58%
Road traffic	1.55%	0.00%	1.50%
Theft/housebreaking	0.94%	0.00%	0.91%
Granted under section 22	0.91%	0.00%	0.88%
Extradition	0.00%	25.98%	0.79%
Domestic Abuse court	0.02%	0.00%	0.02%
Contempt of Court	0.02%	0.00%	0.02%
Grand Total	100.00%	100.00%	100.00%

Overall, our assessment is that our decision-making on counsel is primarily driven by the nature and subject matter of cases (including whether prosecuted at solemn or summary level): in particular, the degree to which a given case involves complexity or sensitivity (alongside the other factors set out in our policy). Whilst the protected characteristics of applicants may potentially intersect with those factors to a certain extent – discussed in the sections below – these will not in themselves tend to be the main drivers for our decision-making on counsel: however, we set out the possible relevance below.

Finally, for context, we note that it is important to bear in mind that counsel is *automatically* available in certain situations (not subject to the test set out by this policy). This includes, for example, the automatic employment of junior counsel in High Court cases and Appeal Court cases, and the employment of senior and junior counsel in murder prosecutions.

Age

Statistics

- SLAB's data

In looking at the profile of assisted persons requesting counsel in comparison to the profile of people seeking summary and solemn legal aid in 2024-25, we see the following age ranges:

Age band	Percentage of total requests for counsel (solemn)	Percentage of total applications for solemn legal aid	Percentage of total requests for counsel (summary)	Percentage of total applications for summary legal aid
<=24	19%	20%	15%	16%
25-34	29%	32%	19%	30%
35-44	26%	29%	22%	31%
45-54	14%	13%	25%	15%
55-64	7%	5%	13%	6%
65+	4%	1%	6%	1%
Grand Total	100%	100%	100%	100%

In broad terms, the solemn profiles are very similar. For summary legal aid, we note that requests from counsel were comparatively more likely to be made by persons in the three highest age bands. For those in the 55-64 and 65+ bands, this appears to be explained by a higher proportion of cases from these groups being comprised of sexual offence cases, in which counsel is more likely to be sought. In the 45-54, a comparatively high proportion of the subject matter was extradition cases – again, a subject matter in which counsel was more likely to be sought.

Overall, we suggest that the profiles above reflect variation in subject matter and associated need for counsel, rather than reflecting (for example) barriers to greater numbers of requests from those in younger age groups.

Age bands (all requests for counsel)	Granted	No decision	Refused	Grand Total
<=24	88%	5%	7%	100%
25-34	87%	4%	9%	100%
35-44	85%	5%	10%	100%
45-54	84%	5%	11%	100%
55-64	83%	5%	12%	100%
65+	87%	5%	8%	100%
Grand Total	86%	5%	9%	100%

The table above shows that the grant rate is very similar across the age bands, with only a small degree of variation. Testing confirms that there is no statistically significant difference in the *overall* grant rate by age (looking at all requests across summary and solemn combined). The numbers are too small to statistically check the grant rates when separated out by solemn and summary procedure. There is little difference in the grant rate by age for solemn legal aid.

For summary, there is a greater degree of difference: persons age 25-34 being more likely to be refused, and persons in the two upper age bands have a comparatively high grant rate. Per the observation above, we anticipate this is likely to reflect variation in case type: for instance, applicants in the 25-34 age group being more likely to be involved in summary assault cases which are refused, perhaps because they are less complex than other case types.

Age bands	Granted	No decision	Refused	Grand Total
Criminal Solemn	86%	5%	9%	100%
<=24	88%	5%	7%	100%
25-34	87%	4%	9%	100%
35-44	86%	5%	10%	100%
45-54	85%	4%	10%	100%
55-64	83%	5%	12%	100%
65+	87%	5%	8%	100%
Criminal Summary	71%	10%	19%	100%
<=24	74%	16%	11%	100%
25-34	63%	0%	38%	100%
35-44	75%	11%	14%	100%
45-54	65%	13%	23%	100%
55-64	82%	12%	6%	100%
65+	86%	0%	14%	100%
Grand Total	86%	5%	9%	100%

- **Data relevant to the policy**

Evidence on different age categories

Our view is that age can have a direct relevance to a request for counsel in some cases, where it is shown that the applicant’s age is relevant to how complex the proceedings are likely to be, or where the applicant’s young (or advanced) age means there is a particular sensitivity in the conduct of the case required which counsel can assist with. However, an applicant’s age in and of itself would not suffice for us to base our decision on.

Research shows that children and young people often struggle to understand advice, proceedings and consequences in the legal context. This can mean cases involving younger accused may require more structured preparation and communication from legal representatives. Where these needs create additional evidential or procedural work, they may interact with the policy’s complexity test.²

Scottish prison research shows that older people in custody have high rates of cognitive impairment and dementia, along with complex health and social care needs. These difficulties can affect comprehension and communication, potentially increasing the support required during case preparation. Such factors may therefore be relevant when assessing whether the involvement of counsel is appropriate, where cognitive or health-related needs materially affect participation.³

Disability

Statistics

- **SLAB’s data**

The table below provides some insight into the prevalence of disability amongst applicants for criminal legal aid (albeit in 2018-19). As can be seen from the figures, the rate of disability is very high,

² [Children and the Scottish Criminal Justice System \(October 2024\)](#)

³ [Pre and post diagnostic dementia care in four Scottish prisons](#)

around twice the level seen in the Scottish population generally (with a figure of 28% reported in the most recent Scottish Household Survey results).

Q16. Do you have a long-standing illness, health problem or disability that limits your daily activity or the kind of work that you do? Base: 378⁴

Yes	54% (n=206)
No	39% (n=146)
Prefer not to say	7% (n=26)

Comparing these figures to the profile of applicants requesting counsel, it is important to note that the disclosure rate for this protected characteristic in our applications data is low, at only 35% (two thirds of applicants did not provide data on this characteristic). This limits the robustness of our potential conclusions in this area. We note that overall, a fifth of applicants requesting counsel declared a disability: this is lower than the figure set out above for applicants for criminal legal aid, and amongst the Scottish population generally.

Disability status	% of requests for counsel
Disability	20.33%
No disability	79.67%
Grand Total	100%

We are not aware of evidence that suggests access to counsel under our policy is more challenging for persons with disabilities, that is, the policy places particular barriers on persons with disabilities that limits the number of requests we receive from this group. Nor do we anticipate that there are substantive distinctions in case types/subject matter that would account for the figures above (for instance, that would show persons with disabilities being significantly less likely to be involved in cases for which counsel is likely to be sought). As such, our current conclusion is that the apparently low volume of requests for counsel from people with disabilities is likely to be a function of the low rate of disclosure, that is, an issue with the completeness and quality of our data, rather than an outcome of our policy position.

Turning to the grant rate, testing confirms that there is no statistically significant difference between applicants with disabilities and those without. This suggests that the policy does not have a discriminatory effect with regards to disability.

Disability status	Granted	No decision	Refused	Grand Total
Disability	86%	5%	9%	100%
No disability	85%	5%	10%	100%
Grand Total	85%	5%	10%	100%

- **Data relevant to the policy**

Discussions with Operational staff as to the relevance of this protected characteristic confirm that we may consider whether the assisted person has a significant intellectual impairment that may affect

⁴ SLAB criminal applicant survey, 2018-19

their ability to understand and take part in court proceedings: this in turn may mean the proceedings are more complex, which would be directly relevant to the policy and our decision-making.⁵

The EHRC's "Inclusive justice" inquiry found significant barriers within the criminal justice system for accused with hidden disabilities (for example cognitive impairment, mental health, neurodivergence) and recommended adjustments to support understanding and participation.⁶

High rates of mental health conditions and cognitive impairments across the criminal justice system indicate that a significant proportion of assisted persons may have disabilities that affect comprehension, participation, communication and decision-making. In practice, this can mean that cases involving applicants with such disabilities are more complex – in turn, this can be relevant to our decision-making when considering requests for counsel.

Evidence on different disabilities

- **Physical disabilities**

No specific evidence found.

- **Learning disabilities**

The EHRC reports that 5–10% of the prison population have learning disabilities and nearly half of male prisoners have had a traumatic brain injury, affecting processing and memory.⁷

Whilst we have referred to data on the prison population throughout this EqIA, to provide a degree of context, we appreciate that the profile of applicants for criminal counsel and the profile of the prison population will by no means match completely.

Many conditions are under-recognised by services, particularly certain neurodevelopmental disorders such as attention deficit disorder and foetal alcohol spectrum disorders. There is a notable evidence gap in relation to the mental health needs in young people in prison.⁸

- **Mental health**

High rates of depression, anxiety, psychosis and bipolar disorder are recorded at all stages of the justice system, custody, court and prison.⁹

People in prison experience numerous and often complex mental health and behavioural difficulties at a higher rate than people in the community, in the 18th SPS Prisoner Survey, individuals in prison self-reported having been assessed and diagnosed with mental disorder at the following rates:

⁵ This might also be procedurally – for instance if it meant an examination of facts was required.

⁶ Equality and Human Rights Commission (2020), [Evidence base – Inclusive justice: a system designed for all](#).

⁷ Equality and Human Rights Commission (2020), [Evidence base – Inclusive justice: a system designed for all](#).

⁸ Scottish Government (2022), [Understanding the Mental Health Needs of Scotland's Prison Population](#).

⁹ Equality and Human Rights Commission (2020), [Evidence base – Inclusive justice: a system designed for all](#).

- depression, 46%
- anxiety/panic disorders, 35%
- post-traumatic stress disorder (PTSD), 21%
- schizophrenia, 8%.

These figures indicate high levels of need.¹⁰

People on remand are generally at a greater risk of experiencing mental health needs than people in prison who have been sentenced. Women may experience more mental health needs than men, but men are less likely to be in contact with prison mental health services for treatment for their needs.¹¹

Sex

Statistics

- **SLAB's data**

A SLAB survey of criminal applicants¹² reported the following breakdown of applicants by sex:

Q14 Are you...? Base: 383	
Male	74% (n=283)
Female	26% (n=100)
Prefer not to say	-

Turning to the profile of requests for counsel by sex:

Sex and procedure type	Percentage of total requests for counsel
Female	8.36%
Criminal Appeal	1.41%
Criminal Solemn	85.87%
Criminal Summary	12.72%
Male	82.58%
Criminal Appeal	0.79%
Criminal Solemn	96.85%
Criminal Summary	2.36%
Prefer not to say	9.06%
Criminal Appeal	1.63%
Criminal Solemn	96.09%
Criminal Summary	2.28%
Grand Total	100%

The table above demonstrates (with an 80% disclosure rate) firstly that most requests for counsel are from men. It also demonstrates that the context in which they request approval are different: whilst for men, counsel is overwhelmingly sought for solemn proceedings, for women, a comparatively higher proportion (13%) is for counsel in summary proceedings: testing confirms this is a statistically

¹⁰ [Scottish Prison Service - Prison Survey 2024](#).

¹¹ Scottish Government (2022), [Understanding the Mental Health Needs of Scotland's Prison Population](#).

¹² SLAB criminal applicant survey 2018-19.

significant difference. There is also clear variation in subject matter types: a greater proportion of requests from women are made in the context of (for example) drugs-related matters, extradition cases, and culpable homicide, whilst another clear difference is in sexual offences, which account for more than a third of male requests, but less than 10% of female requests.

Sex	Granted	No decision	Refused	Grand Total
Female	79.51%	5.30%	15.19%	100%
Male	87.24%	4.11%	8.65%	100%
Prefer not to say	86.97%	3.26%	9.77%	100%
Grand Total	86.57%	4.13%	9.30%	100%

The data above indicates that the overall grant rate amongst requests for counsel is higher for men than for women: testing confirms this is a statistically significant difference.

Further data analysis suggests there is variation in the comparative grant rates even at more detailed levels: whilst the grant rate for female applicants in summary proceedings was 64%, for men it was 73%. Even in solemn proceedings, the grant rate is higher for men (88%) than it is for women (81%) – testing also confirms that this too is a statistically significant difference (this does not apply to summary proceedings).

Women are *less* likely to be granted counsel in culpable homicide cases, offensive behaviour cases, ‘other’ cases, road traffic, and sexual offence cases. When we add a further level – procedure type – the data indicates that women are much less likely to be granted counsel in summary assault cases (44% vs 75%); more likely to be granted counsel in solemn drugs matters (93% vs 83%); and less likely to be granted in ‘Other’ solemn cases (69% vs 92% for men).¹³

Having considered this data, we are nonetheless confident that the operation of the policy is not discriminatory in its outcomes with regards to sex. Our view is that even at a relatively granular level (for instance, comparing within subject matter and procedure types) that there can be relevant differences that are not clear on the face of the data: our experience is that female applicants are generally less likely to be involved in serious or complex assaults compared to men – which would have a direct relevance our decision-making on requests for counsel. Variations in subject matter are also likely to be relevant here: for instance, a greater proportion of requests for counsel from women being made in the context of embezzlement/fraud proceedings, which are generally less likely to merit the use of counsel. Overall, we are satisfied that variation in the grant rate by sex is explained by an intersection between sex, subject matter, the type of procedure and the factors set out in our policy: whilst there are differences in outcomes, our view is that these are legitimate outcomes in the context of our policy intent.

- **Data relevant to the policy**

High rates of mental-health needs among women in custody may require additional time and explanation from representatives, increasing case preparation demands. In some instances, this may be relevant to complexity, especially when managing multiple overlapping vulnerabilities.¹⁴

¹³ Internal SLAB data.

¹⁴ Human Rights Consortium Scotland Report (2023), [Lived Expertise in Access to Justice](#).

Evidence on women

No evidence seen.

Evidence on men

Although men represent the majority of accused, the prevalence of mental health needs (that is, an intersection of sex and disability) amongst men involved in the criminal justice system (including those which are not formally identified) may be relevant to the consideration of complexity within the case, and therefore to the need for counsel.¹⁵

Race

Statistics

- **SLAB's data**

SLAB's most recent criminal applicant survey reported the following breakdown by ethnic origin:

Q17 What is your ethnic group? Base: 377	
Prefer not to say	1% (n=3)
A. WHITE	
Scottish	86% (n=323)
Other British	7% (n=26)
Irish	1% (n=2)
Gypsy/Traveller	-
Polish	1% (n=4)
Any other white ethnic group	2% (n=9)
B. MIXED OR MULTIPLE ETHNIC GROUPS	
Any mixed or multiple ethnic groups	0% (n=1)
C. ASIAN, ASIAN SCOTTISH OR ASIAN BRITISH	
Pakistani, Pakistani Scottish or Pakistani British	-
Indian, Indian Scottish or Indian British	-
Banghladeshi, Banghladeshi Scottish or Banghladeshi British	-
Chinese, Chinese Scottish or Chinese British	-
Other	0% (n=1)
D. AFRICAN, CARIBBEAN OR BLACK	
African, African Scottish or African British	1% (n=4)
Caribbean, Caribbean Scottish, or Caribbean British	-
Black, Black Scottish or Black British	0% (n=1)
Other	0% (n=1)
E. OTHER ETHNIC GROUP	
Arab	0% (n=1)
Other	-

Applicant race	Percentage of requests for counsel
White majority	26%
White minority	1%
Non-white ethnic minority	4%
Prefer not to say	69%
Grand Total	100%

¹⁵ Human Rights Consortium Scotland Report (2023), [Lived Expertise in Access to Justice](#).

As with disability, for this protected characteristic, we note that there is a relatively low rate of disclosure in the applications data, of 57%. This may obscure the true picture somewhat. We note that as well as gaps in overall disclosure, there was also a very high (over two-thirds) rate of ‘prefer not to say’ (PNTS), which further complicates analysis. Given the level of PNTS, it is perhaps unsurprising that the level of ‘white majority’ appears very under-represented compared to the evidence above, for example. Further data indicates some difference in procedure: whilst overall, requests for counsel in summary cases amounted to 3.5% of the total, for white minority applicants, that figure was 21%: however, overall, the numbers were too small to test whether this was a statistically significant difference.

Variation in case types can also be seen, with requests from (for example) non-white minority applicants coming comparatively less frequently from the context of assault proceedings, but comparatively more likely from drugs-related matters. Again, we are unable to test whether this is statistically significant.

We are not aware of any evidence which suggests a lack of applications for any of these groups which could be accounted for by said groups facing difficulties in submitting requests/addressing the tests set out in our policy.

Applicant race	Granted	No decision	Refused	Grand Total
White majority	85%	5%	10%	100%
White minority	82%	9%	9%	100%
Non-white ethnic minority	80%	5%	16%	100%
Prefer not to say	87%	3%	9%	100%
Grand Total	86%	4%	10%	100%

There is a degree of variation in the grant rate, with non-white ethnic minority applicants being somewhat more likely to have their requests for counsel refused. The numbers in some categories were too low to allow us to test whether this difference was statistically significant, however – what are actually small differences in volume can lead to apparently high variation in the grant rate. Our current assumption is that the (relatively small) differences above are likely to reflect differences in case types/subject matter as well as limitations in the completeness of our data, rather than impacts of our policy resulting directly from applicants’ race.

- **Data relevant to the policy**

We recognise that there is a body of external evidence that identifies justice inequalities with regards to race and difficulties in relation to communication barriers, for instance. We appreciate that it is possible that in some circumstances, this may mean race is relevant to complexity or novelty. However, we would note that the fact that an applicant needs an interpreter (for example) or is simply of a particular ethnic origin will not in itself suffice to demonstrate counsel is required.

Research undertaken by JustRight Scotland’s indicates that in the context of race, communication barriers, cultural misunderstandings and reduced rights-awareness can impact quality of instructions and increase the risk of procedural misunderstanding. These can relate to complexity and potentially equality of arms, particularly where prosecution evidence requires culturally-informed interpretation

of the facts.¹⁶ Discussions with Operational colleagues confirmed that we would take into account aspects relating to an applicant's race or nationality where those had a bearing on the complexity of the case: for example, cases in which – as part of mitigation – an applicant might seek to argue that culturally-specific issues relating to their race/nationality played a role in their offending (for instance in cases involving undue chastisement of children).

Evidence on different ethnicities

No evidence found.

Evidence on people whose first language is not English

Our position is that the need for an interpreter or other form of communication support is not in itself persuasive of the need for counsel in the absence of other salient points relating to case complexity (for example).

Gender reassignment

Statistics

- **SLAB's data**

No data available.

- **Data relevant to the policy**

Evidence on trans people

No evidence found.

Sexual orientation

Statistics

- **SLAB's data**

No data available.

- **Data relevant to the policy**

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 data available.

¹⁶ [Make Human Rights Justice a Reality](#) – a 2023 report by Human Rights Consortium Scotland, JustRight Scotland, ERCS, The Poverty Alliance, Shelter Scotland, Clan Childlaw and Justice.

- **Data relevant to the policy**

Evidence on different religions

No evidence found.

Pregnancy or maternity

Statistics

- **SLAB’s data**

No data available.

- **Data relevant to the policy**

Evidence on pregnancy and maternity

No evidence found.

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

Statistics

- **SLAB’s data**

Not relevant.

- **Data relevant to the policy**

Not relevant.

Evidence on marriage and civil partnership

Not relevant.

Care Experienced

Statistics

- **SLAB’s data**

SLAB’s most recent criminal applicant survey¹⁷ reported the following breakdown of applicants by care status:

<p>Q19 Are you currently, or have you ever been, 'looked after' by a Local Authority? By this we mean: subject to a supervision order with no condition of residence; with foster carers or prospective adopters, in a residential care home, in a residential school or a secure unit.</p> <p>Which of the following applies to you? Base: 340</p>	
Currently 'looked after' by a Local Authority	8% (n=28)
Have previously been 'looked after' by a Local Authority	13% (n=45)
Never been 'looked after' by a Local Authority	68% (n=232)
Prefer not to say	10% (n=35)

¹⁷ SLAB criminal applicant survey, 2018-19.

There was a 57% disclosure rate for care experience amongst the requests for counsel; as with other protected characteristics, there is a very high rate of respondents answering ‘prefer not to say’ which makes proper analysis challenging.

Care experience	Percentage of total requests for counsel
Yes	3%
No	11%
Prefer not to say	86%
Grand Total	100%

Care experience	Granted	No decision	Refused	Grand Total
Yes	92%	2%	7%	100%
No	86%	5%	10%	100%
Prefer not to say	86%	4%	10%	100%
Grand Total	86%	4%	10%	100%

We note that in relation to this characteristic, there does appear to be something of a difference in the grant rate, though not one which suggests difficulties for applicants who have experience of care: testing confirms that this difference is **not statistically significant**, however.

- **Data relevant to the policy**

Care experienced people are heavily over-represented in the justice system, with many reporting difficulties understanding rights, processes, and consequences of legal proceedings. Where an applicant’s experience of care – perhaps intersecting with other protected characteristics such as disability – mean that the facts and circumstances of the case are particularly complicated, this could potentially engage the complexity factor with regards to possible requests for counsel in certain cases.¹⁸

Evidence on care experienced people

Guidance on representing care-experienced children and young people notes distress, confusion and mistrust during justice processes, which can affect the quality of instruction-giving and require trauma-informed practice, factors relevant to the appropriateness of counsel in some cases.¹⁹

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.

Whilst it may be that in practice, the rate of counsel grants/refusals (and indeed requests) does vary by equality characteristic, our assumption is that this will be primarily because of interaction with case/charge type. For example: certain cases (such as those prosecuted in the High Court) may generally be more ‘complex’ – and thus more likely to be granted counsel. Our initial assessment is that our decision-making here will largely reflect the nature of the case, rather than the equality

¹⁸ [Who Cares? Scotland’s Report on the Criminalisation of Care Experienced People \(2018\)](#).

¹⁹ Children and Young People’s Centre for Justice (2021), [Representing Care Experienced Children & Young People in Police Custody: A Good Practice Guide](#).

characteristic per-se. It should be noted that in looking at outcomes of the policy at a later stage, we may nonetheless see an unintended divergence of impact: this would need consideration at policy review stage.

However, some elements of the policy are likely to have some direct relevance to equality characteristics. Our current policy takes into account ‘complexity’: under this factor, there is the potential for us to take into account equality considerations²⁰; for example, whether the assisted person has a significant intellectual impairment that may affect their ability to understand and take part in court proceedings (which in turn means the proceedings are more complex).²¹ This will be particularly important to applicants with certain forms of disability. This is not a standalone consideration: the application must demonstrate a relevant interaction between the applicant’s protected characteristic and the factor of complexity.

Generally, our policy on approval for counsel does not necessarily appear to be more important for some equality groups rather than others. The factors used (in particular, complexity) are broad enough to enable consideration to be given in the context of various protected characteristics and how they interact with the case.

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:

Given the assessment that this policy will have relevance to at least some of the equality groups, our view is that a full EqIA 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.

None.

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

N/A.

²⁰ This to be expanded on in Decision-makers’ Guidance.

²¹ This might also be procedurally, for instance if it meant an examination of facts was required.

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 observations

As noted under 2.2, our view is that outcomes of this policy will tend to be driven by factors which are no more than indirectly related to the applicant's protected characteristics – for instance, complexity in the law given the circumstances of the case at hand. However, our assessment is that there are factors in the policy which *could* (at least potentially) make an applicant's protected characteristics relevant to our decision, and which could make those weigh towards a grant: complexity, sensitivity and novelty. The framing of those factors is wide enough – in principle – to allow for *any* of the protected characteristics to be considered in this way, where relevance is shown to the factors set out in the policy.

Our view is that this means that the policy position as described should be seen as having the potential to advance equality of opportunity across the range of protected characteristics. However, on the other hand, we also wish to make clear that an applicant's protected characteristics in and of themselves are not relevant to our decision-making: a relevance of the characteristics to the factors set out in the policy must be demonstrated.

Age

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

In broad terms, the age profile of applicants requesting use of counsel, as well as the grant rate for each age band, closely mirrors the pattern of applicants for criminal legal aid (especially so for solemn). We are not aware of any evidence that suggests the policy has the potential for discrimination on the grounds of age. There is very limited variation in the grant rate, which we confirmed was not statistically significant.

As noted above, in terms of relevance, an applicant's age may be relevant to the complexity/sensitivity factor. Where difficult issues arise in a case because – for instance – the applicant is either very young or elderly - such issues relating to age could be relevant to and taken account of in our decision-making within the existing policy.

Disability

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

We set out evidence above relating to the prevalence of disability amongst applicants requesting counsel and the relevant grant rate; our view is that the applications data does not suggest any clear detriment caused by the policy that could be seen as having the potential for discrimination: the

difference in grant rate is not statistically significant, nor are we aware of broader evidence that suggests disabled persons are less able to access counsel because of our policy position.

On the other hand, our view is that the factors of novelty and complexity are sufficient to allow for consideration of an applicant's disability (in the full circumstances of the case) in our decision-making, in a way which has the potential to advance equality of opportunity. Discussions with Operational leads confirm that complex or sensitive issues can arise directly in cases because the applicant has a disability of some nature, and that the policy enables these to be considered.

Sex

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

Our assessment of the applications data on requests for counsel by sex highlighted several data points of interest: in particular, statistically significant differences in the grant rate, and apparent differences in the grant rate even when looked at more narrowly (for example, within solemn cases). However, as noted above, we are satisfied that this does not reflect a potential for discrimination within our policy. Instead, our view is that this is likely to reflect differences in case subject matter and possibly *within* subject matters (for instance, men being more likely to be involved in more serious and complex assaults compared to the types of assaults female applicants are involved in).

As noted above under the 'cross-cutting' section, the policy is framed in such a way that the factors potentially allow protected characteristics including sex to be considered as part of our decision-making, where relevant. This allows an applicant's full circumstances to be considered, and as such, our view is that the policy advances equality of opportunity. We note again that an applicant's sex *in itself* is not a relevant consideration which would tip the balance of our decision-making. It is only where the applicant's sex can be feasibly tied to the factors in our policy that it would become relevant to our decision-making.

Race

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

Whilst we are aware of general evidence that indicates people from minority ethnic backgrounds can face barriers in readily accessing public services, we are not aware of any specific evidence that suggests our policy on approval for counsel creates specific difficulties in this regard.

There are several limitations to the applications data we have available – in particular, the high rate of prefer not to say, and the rate of non-disclosure of ethnicity data – which mean that the conclusions we can draw robustly are limited. In combination with our broader Operational decision-making experience, overall, our view is that there is no clear evidence that the policy is discriminatory with regards to race.

As noted above under the 'cross-cutting' section, the policy is framed in such a way that the factors potentially allow protected characteristics, including race, to be considered as part of our decision-

making, where relevant. This allows an applicant's full circumstances to be considered, and as such, our view is that the policy advances equality of opportunity.

Gender reassignment

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

As noted above under the 'cross-cutting' section, the policy is framed in such a way that the factors potentially allow protected characteristics, including gender reassignment, to be considered as part of our decision-making, where relevant. This allows an applicant's full circumstances to be considered, and as such, our view is that the policy advances equality of opportunity.

Sexual orientation

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

As noted above under the 'cross-cutting' section, the policy is framed in such a way that the factors potentially allow protected characteristics, including sexual orientation, to be considered as part of our decision-making, where relevant. This allows an applicant's full circumstances to be considered, and as such, our view is that the policy advances 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).

As noted above under the 'cross-cutting' section, the policy is framed in such a way that the factors potentially allow protected characteristics, including religion or belief, to be considered as part of our decision-making, where relevant. This allows an applicant's full circumstances to be considered, and as such, our view is that the policy advances equality of opportunity.

Pregnancy & Maternity

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

As noted above under the 'cross-cutting' section, the policy is framed in such a way that the factors potentially allow protected characteristics, including pregnancy and maternity, to be considered as part of our decision-making, where relevant. This allows an applicant's full circumstances to be considered, and as such, our view is that the policy advances 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.

Not applicable for assessment under this policy.

Care experience

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: Positive impact(s).

Whilst we are aware of general evidence that indicates people who have experienced care can face barriers in readily accessing public services, we are not aware of any specific evidence that suggests our policy on approval for counsel creates specific difficulties in this regard.

As noted above under the ‘cross-cutting’ section, the policy is framed in such a way that the factors potentially allow protected characteristics, including care experience, to be considered as part of our decision-making, where relevant. This allows an applicant’s full circumstances to be considered, and as such, our view is that the policy advances 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, no changes are required.

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 and an extract from the minutes to reflect the discussion.

This EqIA was informed by discussions with key operational decisions makers in January and February of 2026. This was followed by consideration by senior staff at the GALA Review Group on the 26/02/2026.

Step 6: Post-implementation actions and monitoring impact

6.1. Record any ongoing actions below

No specific actions identified at present.

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)
Breakdown of applications and grant rate by protected characteristics: to source specific refusal reasons, if possible.	AMI with Policy input.	Per review cycle, to Head of Criminal Legal Assistance.

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.

26/02/2029.

Step 7: Assessment sign off and approval

Director/SRO sign off: 26/02/2026.

Chief Executive approval: 26/02/2026.