



EQUALITY IMPACT ASSESSMENT

(EqIA)

Summary results of the EqIA

Title of policy/practice/process/service:

Children's legal aid: merits test for relevant persons – proceedings before the Sheriff Appeal Court and Court of Session.

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 identifying whether this policy has an impact on people with equality related circumstances, we have analysed our own data with regards to assisted persons. Based on the data currently available, we could not identify any significant indication that would allow us to draw any meaningful conclusion on the impact of our policy on applicants with protected characteristics.

Additionally, we have gathered literature-based evidence, and found that administrative burden, which is something that commonly occurs when people engage with public services, may have a significant impact on people and their mental health, especially equality groups. Administrative burden may be most challenging to overcome by groups who are already at a disadvantage. It may worsen stress, anxiety, stigma, and it increases the demand for cognitive engagement with time intense and complex matters. People with disabilities, specifically those affecting their mental health, as well as those having a lower proficiency and literacy in English might face heavier burdens and disadvantages accessing legal aid – a public service, compared to those, who don't have these protected characteristics. However, whilst acknowledging these potential costs, in the specific context of legal aid and this policy, it is important to note that the solicitor has the lead role in engaging with the application process: our view is that given the solicitor's role, the direct administrative burden impacts of our policy on applicants may be more limited than might be the case for other services.

Summary of actions taken because of this assessment:

No specific actions following this impact assessment have been taken, however, we are going to continue gathering and analysing data and monitor this policy to ensure we are aware of any potential and future changes with regards to the impact of this policy on assisted persons with equality related circumstances.

Ongoing actions beyond implementation include:

Ongoing actions include the gathering and analysis of data in relation to this policy. We will closely monitor the refusal of grants 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.
Solicitor, 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.

Publication date (for completion by Communications):

19/03/2026.

Step 1: Scoping the work being assessed

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

The Legal Aid (Scotland) Act 1986 sets out the merits test to be applied to relevant or deemed relevant persons seeking children's legal aid for appeal proceedings in the Sheriff Appeal court or Court of Session. The test is one of reasonableness and substantial grounds. This policy sets out SLAB's approach to the application of these tests: that is, what we consider in making the decision. Section D of the policy statement is set out below for reference:

"The "substantial grounds" test

"Our policy on the substantial grounds test is that we will refuse any applications which do not have strong prospects of success (whether in making an appeal or responding to one). The grounds of appeal presented or reasons to respond to them must be more than merely stateable to satisfy this test.

"In considering this test, we will specifically consider the following factors, as appropriate to the particular facts and circumstances of the case:

- Whether the appeal application relies on highlighting actual errors of law and/or procedural irregularities¹, rather than simply re-litigating disputes on the facts.*
- If so, whether there are strong prospects of succeeding with such an argument outlined in the appeal or in responding to the appeal points raised by the appellant.*

"The "Reasonableness" test (general)

¹ See S166 of the 2011 Act.

“In considering this test, our policy is that we will specifically consider the following factors, as appropriate to the particular facts and circumstances of the case:

“Applicants wishing to make an appeal:

“For applicants wishing to appeal against a sheriff’s decision on an appeal from a children’s hearing in relation to a decision made on a full Compulsory Supervision Order, we will always consider if this is a reasonable course of action to take, given that a relevant or deemed relevant person can request a review children’s hearing to review a decision on a full CSO after three months of that decision being made.

“For applicants wanting to appeal against a sheriff’s decision on an appeal from a children’s hearing in relation to a decision made on a full or interim Compulsory Supervision Order, we will also always consider if it is a reasonable course of action by ensuring that the particular Order (interim or full) will still be in force when the appeal before the Sheriff Appeal Court or Court of Session is likely to be heard.

“For both appellant and respondent applicants we will also consider –

- Whether the outcome of the appeal will materially affect the applicant.*
- Whether the outcome of the appeal will materially affect the subject child or children.*
- Whether the outcome of the appeal will have a material effect on other proceedings relating to the applicant or the child, such as ongoing or proposed criminal or civil permanence proceedings.*

“Reasonableness of appeals directly to the Court of Session

“Where the applicant wants to appeal directly from the sheriff to the Court of Session, rather than to the Sheriff Appeal Court our policy is that in addition to the general factors above, further factors will be taken into account when considering reasonableness. In this context, where substantial grounds have been established, we then have to look at the court forum when considering reasonableness.

“For applications relating to appealing a sheriff’s decision directly to the Court of Session, we take the following factors into consideration:

- Whether there are points of exceptional complexity and/or entirely novel points of law to be raised;*
- Whether the outcome of the appeal decision is likely to be of national importance with a wider public impact beyond the case in hand, which could materially affect other unrelated cases and/or alter the future practice and/or procedure of children’s hearings.*
- Whether there is a prior decision/precedent at Sheriff Appeal Court level which the applicant seeks to overturn;*

“Appealing from the Sheriff Appeal Court to the Court of Session

“Our policy is that where the Sheriff Appeal Court grants leave to appeal its decision to the Court of Session (see S164 (2) of the 2011 Act), then this is sufficient to meet the substantial grounds test for appealing or responding to such an appeal.

“In then considering the reasonableness of making or responding to such an appeal, we will consider, as above, the material impact on the applicant and/or the child; and whether the decision to be

appealed could have already been reviewed and fallen (or an order lapsed) by the time the appeal to the Court of Session is actually heard.

“If leave to appeal is not granted by the Sheriff Appeal Court but a legal aid application is still made to appeal to the Court of Session, we will refuse the application on the basis that substantial grounds have not been shown, as the Court of Session will not hear the appeal without such leave being granted by the Sheriff Appeal Court.”

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 affected by this policy is the applicant seeking a grant of legal aid.

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?

This policy may have implications for SLAB’s policy on the use of conditions in children’s legal aid.

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

From 2017 to April 2024, we received a total of 119 applications from relevant persons in the Sheriff Appeal Court or Court of Session in relation to this policy. Out of 119 applications, 50 applications were granted, 27 were not considered and 42 were refused, giving an overall grant rate of 42%.²

Reasons for refusal were wide-ranging; from insufficient information provided to proceed with the appeal process, to a more substantive refusal of the application on the merits, due to failure to demonstrate substantial grounds to appeal, for example.³

This was very similar for applications not considered. The most common reason was ‘lack of information’ and lack of demonstration for substantial ground of appeals.⁴

This aligns with the experience of our operational staff. We receive a relatively small number of applications under this policy compared to the volume of cases in the Sheriff court. In line with the

² SLAB’s own equality data (internal)

³ SLAB’s own equality data (internal)

⁴ SLAB’s own equality data (internal)

data, operational colleagues have confirmed that the main reason for refusal is lack of information. Our experience suggests that in a fairly high proportion of cases, solicitors do not provide enough detail to demonstrate the merits aspects of their case, which may lead to a refusal of their application. It is the solicitor who would recognise an error of law has occurred and who – if their client agrees with the advice to do so – would pursue an appeal of the final decision. It is within the solicitor’s control and responsibility to submit an application with the correct and necessary information. We have no specific evidence for this, but whilst it’s the solicitor’s responsibility to apply with the correct information, they may also rely on the applicant to provide them with certain information, which requires the ability to communicate well. The latter may be something that could be impacted by an applicant’s protected characteristic, such as having a disability or limited ability to communicate in English.

Administrative burden may occur when people access public services. The consequence of this may lead to learning, compliance and/or psychological costs. This may result in inequality and lead to different outcomes for people or add extra challenges they might have to overcome. Administrative burden can be a barrier to people wanting to access a service.⁵

The administrative burden literature explains that learning costs are the challenges that people face finding out about a program’s existence and benefits, determining whether they are eligible for the program and what benefits they might receive, as well as understanding how to apply for, retain, and redeem benefits.⁶

Other research on administrative burden notes that ‘compliance costs involve the time and effort spent on the often tedious task of filling out forms, documenting status, or responding to bureaucratic directives. It includes the time spent waiting on hold or driving to an administrative office.’ Some people may have to spend years on waiting lists to be able to access a service. This, however, often doesn’t ‘just’ involve waiting. People often must actively input time and financial funds to keep their place on the list. This can make services inaccessible for some groups.⁷

Another cost identified is redemption costs. ‘In short, it is not just the costs of accessing and maintaining access to basic rights and benefits, it can also be the process of actually using benefits.’ If a process or a system is too complicated to access or use, some people may simply abandon or avoid it.⁸

Finally, a further type of costs are psychological costs: ‘these include stress, frustration, anxiety, loss of autonomy, or sense of stigma that arise from trying to access and maintain as well as use benefits or services.’ Stress related to accessing and using public service or policy in relation to other stresses, may accumulate and have even more damaging effects.⁹

Not only might the reach and effectiveness of public services or programmes be impeded by their associated administrative burden – meaning that the people most in need of the service may be least able to access it – but to the extent that these burdens impact disproportionately on those with

⁵ [Introduction: Administrative Burden as a Mechanism of Inequality in Policy Implementation | The Russell Sage Foundation Journal of the Social Sciences \(2023\)](#).

⁶ [As above](#).

⁷ [As above](#).

⁸ [As above](#).

⁹ [As above](#).

protected characteristics, the literature suggests that administrative burden may exacerbate existing inequalities¹⁰.

Burdens may also be more challenging on people with fewer resources and those who need the most help. Burdens may not just be time consuming, but they can also be cognitively demanding and complex. People or groups with fewer resources might struggle more with overcoming those. Resources may include education, funds, administrative literacy, having access to the internet, or cognitive skills in general. Mental ill health is also associated with high burden.¹¹

Our view is that the administrative burden literature is an important body of evidence for us to consider when assessing the impacts of our policies, which may well be relevant to some of SLAB's functions. However, for context, we would also note that in some policy areas – such as this one – the solicitor is responsible for making the application (on the client's behalf), and as such, the potential administrative burden on the applicant is mitigated somewhat by the role of the solicitor. The evidence on administrative burden is likely to be at least as relevant to the how the solicitor deals with their client as it is to the impact of SLAB's policy on that client. Research suggests that factors such as poverty/low income, disabilities, low literacy, digital exclusion or limited use or confidence online and domestic abuse can present barriers for people to find and access legal support.¹²

International reports indicate a vulnerability factor regarding the people most likely to encounter a legal problem – people with a disability, people living within disadvantaged housing, people who are unemployed, single parent households, and people living in regional areas.¹³

Age

Statistics

- **SLAB's data**

If a relevant person is also a child (that is, under a certain age), then we can take this into account in our decision-making.¹⁴ The age span of applicants under this policy ranged from 12–66 years, with the distribution by age bands shown below.

The number of applications was too small to enable us to report the grant rate across the various sub-categories.¹⁵

Age bands	Percentage of total applicants
<=24	17.65%
25-34	36.13%
35-44	25.21%
45-54	15.13%
55-64	5.88%
Total	100%

¹⁰ [Introduction: Administrative Burden as a Mechanism of Inequality in Policy Implementation | The Russell Sage Foundation Journal of the Social Sciences \(2023\)](#).

¹¹ [As above](#).

¹² Evidence Review: Findings from SLAB's UNCRC implementation literature review, June 2024 (internal source).

¹³ [Law and Justice Foundation of NSW | Legal Australia-Wide survey: Legal need in Australia \(2012\)](#).

¹⁴ Discussions with Operations staff (internal).

¹⁵ SLAB's own equality data (internal).

- **Data relevant to the policy**

External research indicates that the incidence and severity of disability increases as we age,¹⁶ the ability to process complex tasks slows,¹⁷ and that age is the most important factor in relation to cognitive decline.¹⁸

Evidence on different age categories

Attention spans for children increase as they reach 18.¹⁹

Disability

Statistics

- **SLAB's data**

Insights from discussions with Operational decision-makers suggest that in some cases there may be a link between disability and whether an applicant is more likely to be represented by a curator – which we could consider in our decision-making.²⁰

The disclosure rate in relation to disability within our applications data was around between 30 and 35%, whilst the low number of applicants also means that it is not appropriate for us to report the distribution within this protected characteristic, or to show more detailed analysis such as grant rate by disability status. As such, our assessment is that it is not possible to draw any specific conclusions about the experiences of persons with and without disabilities under our policy directly from the applications data which we hold.²¹

For people with experience of poor mental health, stress in formal situations was a common theme and, for some, the ability to retain information was a daily challenge due to the nature of their conditions. Access was the most prevalent theme for people with learning or physical disabilities.

This was discussed in several forms – contacting a service, getting information or understanding discussions. For people with experience of poor mental health, the biggest communication challenge is needing to frequently explain not only the reason for the appointment, but details of their condition or diagnosis. Other barriers faced by this group relate to difficulties around understanding or retaining information.²²

- **Data relevant to the policy**

Specific case types where legal aid funding is provided are focused on people who have, or are ascribed with having, a disability. People experiencing mental health problems can find concentrating

¹⁶ [University of Stirling | Healthy Ageing in Scotland \(2018\)](#).

¹⁷ [PubMed® | Attention and aging, Elena Commodari and Maria Guanera \(2008\)](#).

¹⁸ [Psychiatric Times | Management of Age-Related Cognitive Decline, Gary W. Small, MD \(2019\)](#).

¹⁹ [What Are Normal Attention Spans for Children? | The Kid's Directory | Christina M. Ward \(2020\)](#).

²⁰ Discussions with Operations staff (internal).

²¹ Discussions with Operations staff (internal).

²² [Public Involvement in Setting SLAB's Equality Outcomes – A report from The Lines Between for SLAB \(2019\)](#).

and remembering things difficult, as well as heightened stress levels, which may be an issue for interacting with SLAB.²³

External evidence on experiences of disability benefits assessments - which may be relevant to our policy insofar as it speaks to potential applicants' ability to identify and provide the information required for an assessment process - found that the main reasons for bringing evidence at the face-to-face assessment stage were that applicants for PIP felt it would be helpful to bring everything (33%) or that they did not have it in time to submit with their original application (29%). Around a fifth of claimants (21%) had evidence they wanted to bring to the assessment but did not have it at this stage. One general theme in the qualitative interviews was that claimants did not know what or how they should prepare.²⁴

Respondents to a LSA poll concerning disabled people's experiences of the justice system felt that their disability was not understood by legal professionals and therefore appropriate arrangements could not be made, resulting in communication and physical accessibility issues.²⁵

Scottish Government research in relation to measuring outcomes for disabled people found that families with at least one disabled member were more likely than families without a disabled member to live in relative poverty after housing costs. If disability benefits are discounted, to allow for the higher living costs for disabled people, this disparity increases (30% compared to 16%).²⁶

Some of SLAB's own research on the experience of relevant persons involved in a children's legal assistance case found that some applicants felt they can face discrimination and stigma because of their disability: one of the respondents was diagnosed with a personality disorder, for which they are receiving treatment. In the context of legal proceedings that they were involved in and had sought legal aid for, the client felt that despite having been treated for years and not experiencing any problems, their disability was being used against them.²⁷

Evidence on different disabilities

- **Physical disabilities**

No further specific evidence found.

- **Learning disabilities**

No further specific evidence found.

- **Mental health**

²³ [ourhealthyminds.com | Living with Mental Illness: A Guide for Family and Friends – Capital District Health Authority Guidance \(2008-10\)](#).

²⁴ [Department for Work and Pensions | Personal Independence Payment Claimant Research – Final Report \(2018\)](#).

²⁵ [Legal Services Agency reports findings following Survey Assessing Disabled Peoples' Access to Justice \(2022\)](#).

²⁶ [Scottish Government | Scotland's Wellbeing – Measuring the National Outcomes for Disabled People \(2019\)](#).

²⁷ SLAB Report | Adult recipients of legal assistance for Children's Hearings research, July 2024 (internal).

No further specific evidence found.

Sex

Statistics

- **SLAB's data**

The distribution of applicants by sex is as follows (with 'prefer not to say' excluded, given very low numbers). As with relevant persons in Sheriff Court proceedings, women make up most applicants:²⁸

Sex	Percentage of total applicants
Female	56.41%
Male	43.59%
Total	100%

The table below indicates that – as with Sheriff court proceedings – the grant rate is somewhat lower for men than for women. However, statistical testing (chi-square) indicates that the difference in grant rate is **not** significant.²⁹

Sex	Granted	Not granted
Female	43.94%	56.06%
Male	37.25%	62.75%
Grand Total	41.03%	58.97%

- **Data relevant to the policy**

N/A.

Evidence on women

N/A.

Evidence on men

N/A.

Race

Statistics

- **SLAB's data**

The disclosure rate in relation to ethnicity within our applications data is around 4%, and combined with the low number of applicants, as such, our assessment is we cannot report the distribution or analysis by grant rate or draw any meaningful conclusions about the distributions or experiences of groups under our policy from the data we currently have.³⁰

Research undertaken for SLAB in the context of setting our equality outcomes found that communication and access issues were the most prevalent concerns for people from ethnic minority backgrounds when engaging with service providers in relation to their legal problems. These access issues were primarily linked to language and communication, with participants highlighting the

²⁸ SLAB's own equality data (internal).

²⁹ SLAB's own equality data (internal).

³⁰ SLAB's own equality data (internal).

difficulties faced by those with poor or no English. Issues included the challenges of making phone calls or appointments, of explaining a situation, of filling in forms or understanding background materials. There were also discussions around the inherent assumptions which are made about service users' knowledge and the need for service providers to understand cultural differences and sensitivities.³¹ It is important to bear in mind that our interactions are almost exclusively with solicitors, rather than with applicants directly: thus to a certain extent, these issues are likely to be barriers that exist primarily within the solicitor-client relationship, rather than between SLAB and applicants.

According to our data, the main support needs which applicants require is translation services. Language barriers affect communication, which may also have an impact on clients understanding and consequently providing information we need from them to assess and grant their application.³²

However, we note again that in the context of the specific merits test policy under consideration here, it is the solicitor rather than the client who would be providing information to SLAB.

- **Data relevant to the policy**

The most spoken languages in Scotland other than English are Polish, Urdu, Scots, Punjabi, and Arabic.³³

According to the latest Scotland's Census results, around 94% of the population in Scotland speak, read, and write English. 2.98% speak, but don't read or write English, 0.88% speak and read but don't write English and 0.98% have limited English skills. Very small percentages of people write, but don't speak or read English and read and write, but don't speak English. 2.22% of the Scottish population are BSL user.³⁴

External research on the experiences of applicants for PIP highlighted that there is a small group of claimants who struggle to understand the process throughout. The qualitative research found those with limited literacy or English language skills are most affected.³⁵ Whilst we recognise this evidence and its possible relevance in the legal aid context, we note – as above – that to a significant extent, applicants' experiences and understanding of the requirements of the legal aid application process are mediated through the role of the solicitor, who has the primary responsibility of providing the relevant information to SLAB.

Evidence on different ethnicities

Please see above.

Evidence on people whose first language is not English

Please see above.

³¹ [Public Involvement in Setting SLAB's Equality Outcomes – A report from The Lines Between for SLAB \(2019\)](#).

³² SLAB's customer communication support service data (internal).

³³ [Scotland's National Centre for Languages | Statistics on languages in Scotland](#).

³⁴ [Scotland's Census](#).

³⁵ [Department for Work and Pensions | Personal Independence Payment Claimant Research – Final Report \(2018\)](#).

Gender reassignment

Statistics

- **SLAB's data**

No specific evidence found.

- **Data relevant to the policy**

A range of sources suggest that gender reassignment is correlated to higher levels of mental ill health.³⁶ This should be considered in the context of broader evidence that suggests persons with mental health issues may face particular issues in relation to administrative burden when engaging with application processes, for instance.

According to the Scottish Census 2022, out of all people aged over 16, 93.64% indicated to not be trans and not have a trans history, compared to 0.44% who identified as trans and/or have a trans history.³⁷

Evidence on trans people

Please see above.

Sexual orientation

Statistics

- **SLAB's data**

N/A.

- **Data relevant to the policy**

According to the Scottish Census 2022, out of all people aged over 16, 87.8% reported to identify as heterosexual/straight, 1.76% as gay or lesbian, 1.76% as bisexual, 0.52% as 'other sexual orientation' and 8.15% did not answer the question.³⁸

Evidence on gay men

Please see above.

Evidence on gay women/lesbians

Please see above.

Evidence on bisexual people

Please see above.

³⁶ [scottishtrans.org | Trans mental health study | Jay McNeil, Louis Bailey, Sonja Ellis, James Morton & Maeve Regan \(2013\); Stonewall | LGBT Britain Health \(2018\); NHS Greater Glasgow & Clyde, NHS Lothian and Public Health Scotland | Health needs assessment of lesbian, gay, bisexual, transgender and non-binary people | Traci Leven \(2022\).](#)

³⁷ [Scotland's Census.](#)

³⁸ [Scotland's Census.](#)

Religion or belief

Statistics

- **SLAB's data**

N/A.

- **Data relevant to the policy**

According to the Scottish Census 2022, out of all people aged over 16, 20.36% have indicated to belong to the Church of Scotland, 13.3% are Roman Catholic, 5.13% identify as 'other Christian', 2.2% as Muslim.³⁹

Evidence on different religions

Please see above.

Pregnancy or maternity

Statistics

- **SLAB's data**

N/A.

- **Data relevant to the policy**

Pregnancy can bring increased financial pressure and contribute to those close to the poverty line falling below. It may also contribute to child poverty and households with children between the ages of 0-4 are at highest risk of poverty. Young mothers are specifically vulnerable. They tend to have lower education than older mothers and stay less educated. Lower education levels and employment contribute to the risk of poverty.⁴⁰

Evidence on pregnancy and maternity

Please see above.

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

Statistics

- **SLAB's data**

N/A.

- **Data relevant to the policy**

Not relevant to this policy: marriage or civil partnership is engaged for employment purposes.

Evidence on marriage and civil partnership

N/A.

³⁹ [Scotland's Census.](#)

⁴⁰ [Scotland's Census.](#)

Care Experienced

Statistics

- **SLAB's data**

The disclosure rate in relation to this characteristic group within our applications data was just under 6%. As such, combined with the low number of applications, our assessment is that the numbers are too low to permit reporting of the distribution within this characteristic, or to allow for other meaningful analysis.⁴¹

Care experienced children and young people are considered a vulnerable group. They might be more likely to require legal support and legal aid, than others.⁴²

- **Data relevant to the policy**

Research on the profile of young people in custody in Scotland found that 34% of young people in custody in Scotland have been in care.⁴³ Broader external research found by Gibson et al that "put bluntly, it is generally the poorest and most socio-economically disadvantaged children who enter the secure estate" following his research which showed that 80% of children placed in secure care by a Scottish Local Authority experienced relative poverty and often come from homes within the most deprived areas of the country.⁴⁴

Evidence on care experienced people

Please see above.

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.

At present, we are not aware of any evidence showing whether any equality groups are more or less likely to be relevant (or deemed relevant) persons making or responding to appeals in the first place (and thus subject to the tests in this policy); or whether relevant persons from particular equality groups are more or less likely to be granted children's legal aid for these kinds of appeal.

In terms of the interaction of specific factors we consider, the question of whether the applicant has substantial grounds for making an appeal is a legal question which concerns the type of argument being made. Our view is that as such, an assisted person's protected characteristics are unlikely to be of primary relevance to our determinations in relation to that factor.

We also consider other factors such as whether a particular Order will still be in force by the time an appeal is likely to be heard. Again, we do not consider that an assisted person's protected characteristics are likely to be relevant here.

⁴¹ SLAB's own equality data (internal).

⁴² Evidence Review, June 2024 – Findings from SLAB's UNCRC implementation literature review (internal source).

⁴³ [Scottish Sentencing Council | Youth offending and sentencing in Scotland and other jurisdictions – Literature review \(2018\)](#).

⁴⁴ [CYCJ and University of Strathclyde, Glasgow | Exploring Justice Inequalities for children in conflict with the law – Preliminary Scoping Review \(2023\)](#).

However, our assessment is that this policy area may nonetheless be relatively important for equality groups when compared to other decision sets; partly because it is a core in/out decision which forms part of our determinations as to whether an applicant gains entry to legal aid funding at all; but also because our decision-making in relation to ‘material impact’ provides a direct route for us to consider the impact of this policy on the applicant – which could be with regard to their protected characteristics - but also potential impacts on equality groups more broadly. This may be particularly important for assisted persons taking an appeal before the Court of Session. The fact we take this wider public interest into account may provide a potential positive equality impact.

To identify whether this policy has any impact on applicants with protected characteristics, we have gathered and analysed our own data on applicants under this policy, as well as analysed external evidence to help us shape and inform our policy. With regards to our own data, for the only protected characteristic for which we have sufficient data to report and analyse – sex – there were no significant differences by grant rate. The most common reason for refusing an application or not considering an application seemed to be ‘lack of data/information’, which may be linked to challenges or barriers related to language and communication. If an applicant, due to a disability, language barrier or other communication need, is not clear what type of information to provide to receive legal assistance, then that may lead to a refusal of legal aid.

To fill in any gaps and further investigate the impact our policy may have on applicants with protected characteristics, we have engaged in a search for external evidence and literature that could assist us in identifying any potential disadvantages or barriers applicants with protected characteristics may have when applying for legal aid and/or engaging with us under this policy.

Section 2.1 provides an overview of evidence we have found that might be of relevance to equality groups and their interaction with legal aid. We found that administrative burden, which is something that commonly occurs when people engage with public services, may have a significant impact on people and their mental health, especially equality groups. Administrative burden may be most challenging to overcome by groups who are already at a disadvantage. It may worsen stress, anxiety, stigma, and it increases the demand for cognitive engagement with time intense and complex matters. People with disabilities, specifically those affecting their mental health, as well as those having a lower proficiency and literacy in English might face heavier burdens and disadvantages accessing legal aid – a public service, compared to those, who don’t have these protected characteristics.

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:

Please see evidence section and section 2.2 above.

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?

Under the Legal Aid (Scotland) Act 1986 the merits test must be applied to relevant or deemed relevant persons seeking children's legal aid for appeal proceedings. The tests applied mainly concern the identification of error of law, which should have no impact on the person themselves or equality groups, however, based on the evidence we provided in section 2.1, we have provided information below on how we support applicants to understand and better engage with legal aid.

General

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

As the evidence in section 2.1 suggests, when people access public services, they may be faced with administrative burden. Administrative burden comes with costs, which may lead to inequality and different outcomes for people who find it more challenging to overcome these.

Research suggests that factors such as poverty/low income, disabilities, low literacy, digital exclusion or limited use or confidence online and domestic abuse can present barriers for people to find and access legal support.

To support applicants in understanding, accessing, participating and engaging under this policy, it's important to communicate and provide information in a way it's accessible to them. Under our Equality Outcomes Plan 2023-26 we have undertaken work involving internal and external stakeholders to develop information about legal aid which is accessible and easily understandable. This will particularly help equality groups to understand what legal aid is and provide them with comfort that they can get support and legal help if needed.

We have also reviewed information available about legal aid on external websites, such as Scottish Government, to ensure that information is accurate and easily accessible to members of the public.

Our website has been reviewed and [equality impact assessed](#) to ensure that information is easily accessible, and the website is easy to navigate, especially for people with protected characteristics. Additionally, our website has a google translate feature which allows for instant translation of the

information we provide on our website. Applicants, as well as members of the public may contact us if they require any information in a different language or format.

As part of the application process for legal aid, people may access our customer communication support service. This service provides additional support to those who require translation/interpretation service.

Providing information and communication in a way it's understandable and accessible, especially equality groups, will help them to better understand and be aware of their rights, better understand the process/proceeding they are part of, and therefore have a better ability to effectively engage in the process and share their views.

Age

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

Legal capacity is a crucial part of legal aid and justice proceedings in general. Recognising a problem as a legal one, being aware of one's rights and asking for help is a prerequisite to accessing legal aid.

The evidence set out above indicates that legal capacity may be particularly challenging for some equality groups. Therefore, it's crucial that applicants are aware of and understand their rights and know how to claim them and/or know where to seek support in claiming them.

To support applicants in understanding, accessing, participating and engaging under this policy, it's important to communicate and provide information in a way it's accessible to children. Under our Equality Outcomes Plan 2023-26 we have undertaken work involving internal and external stakeholders to develop information about legal aid which is accessible and easily understandable. This will particularly help equality groups to understand what legal aid is and provide them with comfort that they can get support and legal help if needed.

We have also reviewed information available about legal aid on external websites, such as Scottish Government, to ensure that information is accurate and easily accessible to members of the public.

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Disability

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

As the evidence in section 2.1 suggests, for people who experience poor mental health, formal stressful situation may be extra challenging to navigate through. Processing and retaining information, as well as concentrating may be very difficult and present a barrier to people accessing legal aid.

According to our data, the most common reason for refusing an application was lack of information. We don't have any evidence for it, as the grant and refusal rate for people with a disability, compared to those without a disability was insignificant, but we know that public services, which includes legal aid, comes with an administrative burden to the applicant. People with a disability might experience an even heavier burden to those who do not suffer from a disability.

To support applicants in understanding, accessing, participating and engaging under this policy, it's important to communicate and provide information in a way it's accessible to them. Under our Equality Outcomes Plan 2023-26 we have undertaken work involving internal and external stakeholders to develop information about legal aid which is accessible and easily understandable. This will particularly help equality groups to understand what legal aid is and provide them with comfort that they can get support and legal help if needed.

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Sex

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: No impact.

When looking at our own data and comparing grant and refusal rates for males and females, statistical testing indicated that there is no significant difference between the two groups: nor are we aware of any broader evidence that suggests sex had any relevance with regards to our decision making under this policy.

We did not come across any evidence in terms of sex presenting any disadvantages or barriers for people accessing legal aid and or being able to understand and navigate through any justice related processes.

Race

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

As noted above, we do not have sufficient data to draw specific conclusions on the possible impacts of this policy directly from our applications data.

External evidence suggests that language and communication may present the biggest barriers to people trying to access a service. Legal aid is very complex, and it may be even more challenging to access and understand for those who have a low proficiency in reading, speaking and understanding English and/or those who have a disability that impacts on the way they access and process information and communicate.

To support applicants in understanding, accessing, participating and engaging under this policy, it's important to communicate and provide information in a way it's accessible to them. Under our Equality Outcomes Plan 2023-26 we have undertaken work involving internal and external stakeholders to develop information about legal aid which is accessible and easily understandable. This will particularly help equality groups to understand what legal aid is and provide them with comfort that they can get support and legal help if needed.

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As part of the application process for legal aid, people may access our customer communication support service. This service provides additional support to those who require translation/interpretation service.

Under our customer communication support service, we ask applicants whether they have any communication needs, ranging from providing written information in a larger font size to providing information in a different language. This helps us to support them in the best possible way and make

sure information we provide is accessible to them. This also helps to ensure clients know what type of information that they need to provide for us to be able to adequately assess their application.

Providing information and communication in a way it's understandable and accessible, especially for equality groups, will help them to better understand and be aware of their rights, better understand the process/proceeding they are part of, and therefore have a better ability to effectively engage in the process and share their views.

Gender reassignment

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

We don't have any data on applicants who fall under this equality group; however, we found evidence that transgender and non-binary people are generally at a higher risk to experience mental health problems compared to those who don't fall under this equality group.

Poor mental health, as some of our evidence suggests, may have an impact on a person's ability to cope with stressful situations, retain and access information and communication. This may make it difficult for people to access legal aid.

To support applicants in understanding, accessing, participating and engaging under this policy, it's important to communicate and provide information in a way it's accessible to them. Under our Equality Outcomes Plan 2023-26 we have undertaken work involving internal and external stakeholders to develop information about legal aid which is accessible and easily understandable. This will particularly help equality groups to understand what legal aid is and provide them with comfort that they can get support and legal help if needed.

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Sexual orientation

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

We did not find a direct link between this protected characteristic and any access issues, barriers or disadvantages and the justice system/legal aid, however, LGBT+ people are more likely to face discrimination, bullying and harassment which may have detrimental effects on their mental health.

Under our Equality Outcomes Plan 2023-26 we have undertaken work involving internal and external stakeholders to develop information about legal aid which is accessible and easily understandable. This will help people to understand what legal aid is and provide them with comfort that they can get support and legal help if needed.

We have also reviewed information available about legal aid on external websites, such as Scottish Government, to ensure that information is accurate and easily accessible to members of the public.

Our website has been reviewed and [equality impact assessed](#) to ensure that information is easily accessible, and the website is easy to navigate through, especially for people with protected characteristics.

Religion or Belief

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

We found evidence that suggests that young Muslim men were more likely to have negative experiences at all levels of the justice system. They often battle stereotyping and stigma.

We did not find any specific evidence with regards to religion or belief having a link to accessing legal aid, however, there might be an intersection between religion and race. Some religious groups might come from minority ethnic background. As mentioned under the protected characteristic of race, some minority ethnic groups may have no or lower proficiency in speaking, reading and understanding English which may have an impact on being able to access legal aid/support and communication.

Under our Equality Outcomes Plan 2023-26 we have undertaken work involving internal and external stakeholders to develop information about legal aid which is accessible and easily understandable. This will help equality groups to understand what legal aid is and provide them with comfort that they can get support and legal help if needed.

We have also reviewed information available about legal aid on external websites, such as Scottish Government, to ensure that information is accurate and easily accessible to members of the public.

Our website has been reviewed and [equality impact assessed](#) to ensure that information is easily accessible, and the website is easy to navigate through, especially for people with protected characteristics.

As part of the application process for legal aid, people may access our customer communication support service, which provides additional support to those who require translation/interpretation services.

Pregnancy & Maternity

Potential for discrimination: No impact.

Potential for developing good relations: No impact.

Potential to advance equality: No impact.

We did not find any evidence that may indicate any impact of our policy on this protected characteristic.

Whilst we have no evidence on the impact of our policy on this protected characteristic, we would take pregnancy/maternity into consideration when deciding on whether to grant an application. This would impact on the reasonableness of an assisted person requiring representation and adequate support throughout the proceeding.

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.

This protected characteristic isn't of relevance for this work.

Care experience

Potential for discrimination: Positive impact(s).

Potential for developing good relations: Positive impact(s).

Potential to advance equality: Positive impact(s).

Care experienced people are one of the most vulnerable and socio-economically disadvantaged groups in society, and they are more likely to require legal support/legal aid compared to other groups. We do not believe the policy position as assessed indicates any particular barriers to accessing legal aid amongst this group.

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:

As stated under 2.2, our assessment to date does not indicate any problematic differences in how different protected characteristic groups experience and are impacted by this policy; however, for several protected characteristic groups our applications data is limited. Broader evidence is set out above. The most common reason for refusing an application or not considering an application seemed to be 'lack of data/information', which may be linked to challenges or barriers related to language and communication. If an applicant, due to a disability, language barrier, or other communication need is not clear what type of information to provide to receive legal assistance, then that may lead to a refusal of legal aid: however, there is a crucial role for the solicitor here, given it is the solicitor who makes the application to SLAB, which may mitigate equalities-related issues to some extent. As described in section 4.1, we have engaged in various pieces of work that we believe contributes to us providing information in a way it's accessible to those who need our help. Legal aid is a very complex area, and it may be even more challenging to understand and access for equality groups.

To remove any disadvantages these groups may experience due to any implications based on their disability, language barriers or other communication needs that may hinder them from accessing legal aid and/or engaging with it, we have worked with internal and external stakeholders to make information about legal aid more accessible. The aim is to support applicants in better understanding how they can get legal support.

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 is a review of current policy. Several meetings between the Policy owner and the Policy officer (Equalities) were held to analyse and review the internal data provided by our Analysis & Management Information (AMI) team, as well as to research and discuss any findings external evidence would provide. The review was then considered by senior leadership staff.

Step 6: Post-implementation actions and monitoring impact

6.1. Record any ongoing actions below

No 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 requests and grants by protected characteristics, where available.	AMI/Policy.	Head of Civil and Children’s Legal Assistance: once per review cycle.
Further disaggregation of the above – if possible – to identify specific requests based on wider public interest regarding equality issues.	AMI/Policy.	Head of Civil and Children’s Legal Assistance: once per review cycle.

6.3. EqIA review date

06/03/2029.

Step 7: Assessment sign off and approval

Director/SRO sign off: 12/03/2026.

Chief Executive approval: 12/03/2026.