EQUALITY IMPACT ASSESSMENT (EqIA)

Summary results of the EqIA

Title of policy/practice/process/service:

Interests of Justice Summary Proceedings.

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

Revision of existing policy.

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

The Interests of Justice (IOJ) test for summary criminal legal aid involves discretionary decision-making by SLAB, based on statutory factors set out in the Legal Aid (Scotland) Act 1986. These factors include considerations such as the accused person's ability to understand proceedings, the complexity of the case, and the potential consequences of conviction.

Because the test explicitly includes factors relating to vulnerability, such as age, disability and language, there is a clear potential for differential impacts on individuals with protected characteristics. In addition, the policy on accepting late applications based on "special reason" introduces a further area of discretion, where there is a risk of indirect discrimination if individuals facing barriers (e.g. mental health issues, language barriers, or chaotic lifestyles) are less able to comply with procedural requirements.

On that basis, a full EqIA was required.

The assessment has identified that, while the policy already incorporates safeguards aligned with the statutory framework, there remains a need to ensure consistent decision-making and appropriate consideration of equality-related factors in the exercise of discretion.

Summary of actions taken because of this assessment:

Reviewed the application of the IOJ test to ensure that factors relating to vulnerability (for example, disability, language, age) are clearly reflected in guidance and consistently applied.

Assessed the "special reason" policy for late applications to ensure it allows sufficient flexibility to avoid disproportionate impacts on individuals facing barriers. Confirmed that existing policy framing (for example, "substantial disadvantage" and "serious consequences") supports consideration of equality-related circumstances.

Ongoing actions beyond implementation include:

Monitoring decision-making patterns for IOJ and special reason decisions to identify potential disparities between groups. Reviewing feedback from solicitors and stakeholders on how the policy operates in practice, particularly for vulnerable clients. Keeping the policy under review to ensure it continues to align with equality duties and emerging evidence.

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

- Head of Criminal Legal Assistance, Criminal Legal Assistance
- Policy Officer (Equalities), Policy & Development.

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):
04/11/2026.

Step 1: Scoping the work being assessed

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

Our policy is that the threshold to satisfy the IOJ test is reached when an unrepresented party would be at a substantial disadvantage in relation to the prosecution and/or an unrepresented party faces serious consequences if convicted.

Our policy is that the threshold is satisfied in all summary cases marked for prosecution in the Sheriff court.

In the JP court our policy is that the IOJ test is satisfied where one or more of the factors is reasonably stateable. Some factors are not applicable in cases where the person is pleading guilty; this is stated below for the avoidance of doubt.

A decision maker can be satisfied that the test is met based on information pertaining to a single factor or multiple factors. Our decisions are made on the information as stated in the application and if that information does not meet the test, information such as the complaint available from the Crown.

For all statutory factors:

- the offence is such that if proved (or admitted) it is likely that the court would impose a sentence which would deprive the accused of his liberty
- the determination of the case may involve consideration of a substantial question of law, or of evidence of a complex or difficult nature

- the accused may be unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise
- it is in the interests of someone other than the accused that the accused be legally represented (not a factor where a client is pleading guilty)
- the defence to be advanced by the accused does not appear to be frivolous (not a factor where a client is pleading guilty)
- the accused has been remanded in custody pending trial (not a factor where a client is pleading guilty).

The statutory factor of loss of livelihood, considered as part of an expanded non-statutory factor:

- there is likely to be a loss of livelihood or other effects of conviction such as damage to reputation, blighting career prospects, psychological trauma, emigration or travel difficulties, potential loss of tenancy or inability to find a mortgage, impact on caring responsibilities such as contact with children.

No other factor is considered.

At the point of grant, we do not put conditions on the grant in relation to the IOJ test. In other words, there is no review during the lifetime of the grant on whether IOJ remains satisfied during the lifetime of the grant.

Special reason for late application

Our policy on 'special reason' is that, where a solicitor can show:

- they were prevented from applying timeously 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 application was to be made; or
- the impact on the client is such that rejecting it from assessment would disproportionately affect the client concerned,

this will generally be accepted as a special reason for late submission of an application. SLAB's policy is that the circumstances described must amount to more than simply plain oversight or ignorance of the Regulations to suffice as a 'special reason'.

Specified date or stage in proceedings

If we are satisfied that there is a special reason for late submission, we will accept a late application without providing a specific date or stage in the proceedings, unless the case has concluded.

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

Legislative change.

This policy review has been prompted by legislative change and provides an opportunity to clarify and formalise existing practice in relation to the IOJ test and the treatment of late applications.

The core IOJ test remains unchanged and continues to be applied in line with the statutory framework. However, the review introduces a clearer policy position on the 'special reason' test for late applications, which had previously been applied in practice but not formally set out.

The review also removes references to ABWOR to ensure consistency and clarity across criminal legal aid policies.

This process therefore supports improved transparency and consistency in decision-making, clearer guidance for solicitors and decision makers, and assurance that the exercise of discretion within this policy area aligns with statutory requirements and equality duties.

- **Who is affected by this policy/practice/process/service?**

The customer is the legal aid applicant.

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

14/12/2026.

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

- Financial eligibility assessment for criminal legal aid
- Automatic criminal legal aid (where applicable in parallel systems)
- Accounts assessment (in relation to granted cases)
- Wider criminal legal aid guidance and operational processes
- Any guidance relating to decision-making consistency and quality assurance.

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

The IOJ test determines whether public funding for legal representation is required to ensure a fair trial. The statutory framework explicitly requires consideration of whether an accused person can understand proceedings or state their case, alongside the seriousness and complexity of the case.

The policy therefore directly engages with factors linked to vulnerability and disadvantage. Decision-making relies on the information presented in the application and, where necessary, supporting material such as the complaint.

There is limited SLAB-specific data linking protected characteristics to IOJ decision outcomes. However, wider evidence from criminal legal aid applicants and the justice system indicates that some groups may experience barriers in understanding legal processes, communicating their circumstances, or engaging with procedural requirements. These factors are relevant to how the IOJ test and "special reason" policy operate in practice.

SLAB management information for completed Criminal Summary cases in financial years 2024-25 and 2025-26 have been used where available. Small numbers have been suppressed in line with disclosure control requirements.

The demographic data below relates to completed summary criminal legal aid applications and has been used as a proxy for the population affected by the IOJ test.

Age

Statistics

- **SLAB's data**

Age bands	Percentage of total summary legal aid applications	Scottish population (Census 2022)
0-19	5%	21%
20-39	59%	25%
40-59	33%	28%
60-79	3%	22%
80+	<1%	4%
Grand Total	**100%**	**100%**

The age profile of applicants seeking summary criminal legal aid differs significantly from the profile of the Scottish population, with applicants aged 20-39 appearing substantially over-represented and applicants aged 60 and over appearing under-represented. Applicants are concentrated within the 20-39 and 40-59 age groups, which together account for over 90% of applications.

Our view is that this reflects the age profile of individuals involved in the criminal justice system rather than resulting from any impact of this policy. Age band comparisons are indicative only because the application data categories and Census age groupings are not directly equivalent.

Age bands	Granted	Not granted
0-19	95%	5%
20-39	96%	4%
40-59	97%	3%
60-79	91%	9%
80+	62%	38%
Grand Total	**96.2%**	**3.8%**

These outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility, and the figures should not be interpreted as representing IOJ decisions alone.

Statistical analysis indicates that the observed differences in outcomes across age groups are statistically significant. However, these outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test.

Applications may be refused for a range of reasons, including financial eligibility, and the figures should not be interpreted as representing IOJ decisions alone.

While the observed differences are statistically significant, we are not aware of any internal evidence or insights to suggest they arise from the operation of the IOJ policy itself.

- **Data relevant to the policy**

The Scottish population is ageing. In 2023, people aged 65 and over accounted for approximately 20% of Scotland's population, while those aged 16-24 accounted for around 11%.[1]

Evidence on different age categories

Evidence suggests that younger individuals are more likely to have limited experience of legal processes and court proceedings, which may affect their understanding of legal rights and procedures.[2]

Older individuals are more likely to experience age-related health conditions, including cognitive impairment, dementia, sensory impairment and other disabilities that may affect participation in legal proceedings.[3]

Younger individuals may have limited understanding of legal processes and their rights, be more reliant on solicitors to identify and present factors relevant to the IOJ test and experience difficulties articulating circumstances relevant to an application.[4]

Older individuals may experience cognitive, mental health or physical health conditions that affect engagement with proceedings and face challenges in understanding court processes or communicating information relevant to their case.[5]

These factors are directly relevant to the statutory IOJ consideration of whether an accused person is "unable to understand the proceedings or to state their own case".

Age-related circumstances may also be relevant when considering reasons for a late application.

[1] National Records of Scotland (2025) Population estimates for Scotland (accessed 11 June 2026).
[2] Youth Justice Board (2024) Youth justice statistics and evidence publications (accessed 11 June 2026).
[3] Alzheimer's Society (2024) Dementia statistics hub (accessed 11 June 2026).
[4] Youth Justice Board (2024) Youth justice statistics and evidence publications (accessed 11 June 2026).
[5] Alzheimer's Society (2024) Dementia statistics hub (accessed 11 June 2026).

Disability

Statistics

- **SLAB's data**

Disability status	Percentage of total Summary legal aid applications
No disability	26%
1 or more disabilities	9%
No data	65%
Grand Total	**100%**

These outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility, and the figures should not be interpreted as representing IOJ decisions alone.

The disability profile of applicants seeking summary criminal legal aid is difficult to compare with the wider population due to the high proportion of applications where no disability information has been recorded. Of those applicants whose disability status was recorded, around 9% reported one or more disabilities. Our view is that the available data is likely to understate the prevalence of disability amongst applicants and reflects data recording limitations rather than the actual level of disability within the applicant group. This is consistent with findings from SLAB's Survey of Private Practice Criminal Legal Aid Clients (2021), which found that approximately 50% of respondents reported a mental health condition, suggesting that levels of disability and mental health needs amongst criminal legal aid applicants may be considerably higher than management information alone indicates.[6]

Disability status	Granted	Not granted
No disability	96%	4%
1 or more disabilities	98%	2%
No data	96%	4%
Grand Total	**96%**	**4%**

These outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility, and the figures should not be interpreted as representing IOJ decisions alone.

Applicants reporting one or more disabilities appear slightly more likely to receive a grant than applicants with no recorded disability. Statistical analysis indicates that the observed difference in outcomes between recorded disability categories is statistically significant.

However, these outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility. We are not aware of any internal evidence or insights which indicate that the observed differences arise from the operation of the IOJ policy itself.

[6] SLAB (2022) Survey of private practice criminal legal aid clients (2021).

- **Data relevant to the policy**

SLAB's Survey of Private Practice Criminal Legal Aid Clients (2021) found that approximately 50% of respondents reported a mental health condition. The survey also highlighted barriers around understanding legal processes, retaining information and engaging with legal services. These findings support wider evidence that disabled applicants may experience challenges engaging with criminal justice processes and procedural requirements.[7]

Evidence on different disabilities

- **Physical disabilities**

People with physical disabilities may face barriers when engaging with Scotland's justice system, particularly where attendance at court or legal processes is required within short timescales. Mobility or access needs can affect a person's ability to attend buildings or participate fully without appropriate support or adjustments.

The Scottish Courts and Tribunals Service provide reasonable adjustments such as step-free access, lifts, and communication support to improve accessibility, reflecting legal duties under the Equality Act 2010.[8]

Scottish Government evidence also indicates that disabled people can experience ongoing inequalities in access to justice due to environmental and procedural barriers.[9]

- **Learning disabilities**

People with learning disabilities may face barriers in understanding legal processes and participating effectively within Scotland's justice system. Learning disabilities can affect communication, comprehension, and independence, which may impact a person's ability to engage fully with legal proceedings.

More recent Scottish Government evidence highlights that disabled people can experience inequalities in access to justice, including difficulties understanding legal information, exercising rights, and engaging with justice processes on an equal basis.[10] This can affect participation and outcomes across the justice system.

The Scottish Commission for People with Learning Disabilities (SCLD) also emphasises that barriers in communication and understanding can limit the realisation of human rights, particularly in relation to access to justice and effective participation.[11]

This highlights the importance of having representation available to prevent potential disadvantage arising from lack of understanding and lack of participation.

- **Mental health**

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[7] SLAB (2022) Survey of private practice criminal legal aid clients (2021).
[8] Scottish Courts and Tribunals Service (2025) Support and reasonable adjustments.
[9] Scottish Government (2023) Access to justice: policy overview / disability evidence within justice system.
[10] Scottish Government (2026) Inequalities and challenges experienced by disabled people in Scotland: evidence review.
[11] SCLD (2023) Solving the human rights puzzle: access to justice for people with learning disabilities.

Mental health conditions can affect memory, concentration and ability to cope with stress, making it harder to engage with legal processes.[12] Such issues are not always visible, obvious or diagnosed, and may fluctuate in severity.

Entering the criminal justice system can also have a significant impact on mental health as arrest, court processes and detention can lead to feelings of stress, anxiety, fear and humiliation that can exacerbate existing mental health issues or create new ones.

It is thought that around 25% of the general population in Scotland are affected by mental health challenges but these are more prevalent the further along the judicial process someone is. It is thought that 40% of the people detained in police custody have a mental health condition and 76% of the prison population.[13]

Mental health conditions or disorders can also impact sentencing, and indeed in some cases custodial sentences cannot be imposed if applicants meet the criteria for mental health disposal. In some cases, the absence of formal diagnosis may make it more challenging to evidence the extent of mental health needs.[14]

These factors may influence how effectively an individual can demonstrate that the IOJ test is met, particularly where decisions depend on the communication of personal circumstances or vulnerabilities.

These factors are also directly relevant to the statutory IOJ consideration of whether an accused person is "unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise."

Sex

Statistics

- **SLAB's data**

Sex	Percentage of total Summary legal aid applications	Scottish population (Census 2022)
Female	16%	51%
Male	63%	49%
Prefer not to say	9%	N/A
No data	12%	N/A
Grand Total	**100%**	**100%**

The sex profile of applicants seeking summary criminal legal aid differs significantly from the Scottish population, with men appearing substantially over-represented and women under-represented. Men

[12] SLAB (2019) Public Involvement in setting SLAB's Equality Outcomes.
[13] EHRC (2020) Inclusive justice: a system designed for all and Next Chapter Scotland on Mental Health when entering criminal justice system.
[14] Scottish Sentencing Council (2024) Judicial Perspectives on Mental Health and Sentencing Issue Paper.

account for approximately 63% of applications despite making up around half of Scotland's population, while women account for approximately 16% of applications.

Our view is that this reflects the profile of individuals involved in the criminal justice system rather than resulting from any impact of this policy.

Sex	Granted	Not granted
Female	98%	2%
Male	96%	4%
Prefer not to say	94%	6%
No data	97%	3%
Grand Total	**96.1%**	**3.9%**

These outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility, and the figures should not be interpreted as representing IOJ decisions alone.

Female applicants appear slightly more likely to receive a grant than male applicants, while applicants who preferred not to disclose their sex appear slightly less likely to receive a grant. Statistical analysis indicates that the observed differences between recorded sex categories are statistically significant. However, these outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility. We are not aware of any internal evidence or insights which indicate that the observed differences arise from the operation of the IOJ policy itself.

- **Data relevant to the policy**

Women account for a minority of those involved in the criminal justice system. In Scotland, men consistently account for most people accused of criminal offences.[15]

Evidence demonstrates that women in the justice system are more likely to have experienced trauma, domestic abuse, mental ill-health and caring responsibilities.[16] These factors can affect engagement with legal processes and may increase the wider consequences arising from conviction. Research also indicates that men may be less likely to disclose mental health difficulties and other vulnerabilities without support.[17]

Evidence on women

Women may experience complex circumstances, including caring responsibilities and experiences of abuse, which affect engagement with legal processes. Face significant consequences from conviction beyond sentence, including impacts on dependent children, housing, employment and financial stability and require consideration of wider personal circumstances when assessing whether the IOJ test is met.[18]

[15] Scottish Government (2025) Criminal proceedings in Scotland statistics (accessed 11 June 2026).
[16] Ministry of Justice (2018) Female Offender Strategy (accessed 11 June 2026).
[17] Mental Health Foundation (2024) Men and mental health (accessed 11 June 2026).
[18] Ministry of Justice (2018) Female Offender Strategy (accessed 11 June 2026).

These factors may be relevant to the statutory consideration of whether refusal of legal aid could result in serious consequences for the individual.

Evidence on men

Men may be less likely to disclose mental health difficulties or other vulnerabilities relevant to an application and rely on legal representatives to identify and present information relevant to their ability to participate effectively in proceedings.[19]

As men comprise most applicants, these factors may affect how fully relevant IOJ considerations are evidenced within applications.

Race

Statistics

- **SLAB's data**

Ethnicity	Percentage of total legal aid applications
White	18%
African, Scottish African or British African	<1%
Asian, Scottish Asian or British Asian	<1%
Caribbean or Black	<1%
Mixed or multiple ethnic groups	<1%
Other ethnic group	<1%
Prefer not to say	45%
No data	35%
Grand Total	**100%**

Ethnicity data is unavailable for a significant proportion of applicants, with around 80% of applicants either recorded as choosing not to disclose or having no ethnicity recorded. Of those whose ethnicity was recorded, White applicants account for the largest group. The high proportion of missing or undisclosed data means that meaningful comparisons with the Scottish population are limited. Our view is that this reflects data collection and disclosure limitations rather than the actual ethnic profile of applicants seeking summary criminal legal aid.

Ethnicity	Granted	Not granted
African, Scottish African or British African	92%	8%
Asian, Scottish Asian or British Asian	96%	4%
Caribbean or Black	85%	15%
Mixed or multiple ethnic groups	97%	3%
Other ethnic group	96%	4%
Prefer not to say	94%	6%
White	96%	4%
No data	98%	2%
Grand Total	**96%**	**4%**

[19] Mental Health Foundation (2024) Men and mental health (accessed: 11 June 2026).

These outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility, and the figures should not be interpreted as representing IOJ decisions alone.

There is some variation in grant rates between ethnic groups. Statistical analysis of regrouped ethnicity categories – comparing white majority, white minority and non-white ethnic minority – indicates that the observed differences are statistically significant.

However, the high proportion of missing and undisclosed ethnicity information, together with the need to aggregate ethnic categories for analysis, means these findings should be interpreted with caution. These outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test.

Applications may be refused for a range of reasons, including financial eligibility. We are not aware of any internal evidence or insights which indicate that the observed differences arise from the operation of the IOJ policy itself.

- **Data relevant to the policy**

No specific evidence found. SLAB's Survey of Private Practice Criminal Legal Aid Clients (2021) identified concerns amongst criminal legal aid applicants around communication, understanding legal processes and engaging with services.

These findings are consistent with wider evidence that language barriers, cultural differences and varying levels of trust in institutions may affect how some minority ethnic groups engage with legal support and justice processes.[20]

Evidence on different ethnicities

Evidence from the Scottish Government suggests that some ethnic groups are more likely to receive certain types of sentences than others, and that within the minority ethnic groups people from African, Caribbean and Black ethnic backgrounds are more likely to receive custodial sentences and are over-represented in Scotland's prisons by 65%.[21]

Conversely, minority ethnic groups are under-represented in the legal profession with the Law Society of Scotland recognising that there is a lack of visible ethnic minority role models.[22] This lack of representation could impact on different ethnicities' propensities to trust the required legal support due to lack of relatability, cultural differences, and even language and communication barriers.

There may also be a lack of familiarity with the legal system and (in some cases) precarious immigration status, which combined with lack of trust, cultural differences and language and communication barriers could create circumstances that are not favourable to minority ethnic applicants.

[20] SLAB (2022) Survey of private practice criminal legal aid clients (2021).
[21] Coalition for Racial Equality and Rights (2025) Racial Inequality in Scotland: State of the Nation.
[22] Scottish Legal News (2022), Report into Racial Inclusion in the Scottish Legal Profession Published.

Evidence on people whose first language is not English

People whose first language is not English may also have additional barriers to accessing the required legal support. The National Records of Scotland tells us that the number of international migrants arriving in Scotland is consistently greater than people leaving Scotland and has been since 2013.[23]

From 2021 onwards, net international migration has gone up exponentially, reaching a peak of +63,549 people for the period 2022-23.[24]

Whilst it is not clear what number of those people come from non-English speaking countries, several concerns have been identified by minority ethnic groups and migrants around language and communication, culture differences and sensitivities, and the inability to provide necessary documentation requested.[25]

Ethnicity and language barriers may therefore be relevant to the statutory IOJ consideration of whether an accused person is "unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise."

Gender reassignment

Statistics

- **SLAB's data**

No SLAB data available.

- **Data relevant to the policy**

The 2022 Scottish Census found that approximately 0.44% of Scotland's population identified as trans or had a trans history.[26]

There is limited evidence directly linking gender reassignment to outcomes under the IOJ test. However, wider evidence indicates that trans people may experience discrimination, social exclusion and barriers when accessing public services.[27]

Evidence on trans people

Trans individuals may, be less likely to disclose personal circumstances or vulnerabilities. Experience barriers in engaging with services due to concerns about stigma or discrimination and have lower levels of trust in institutions because of previous negative experiences.[28]

There is currently limited evidence demonstrating how these factors specifically affect IOJ decision-making, representing a gap in the available evidence base.

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[23] National Records of Scotland (2025) International Migration by Scottish Administrative Areas and Sex.
[24] National Records of Scotland (2025) International Migration by Scottish Administrative Areas and Sex.
[25] The Lines Between (2019), Public Involvement in Setting SLAB's Equality Outcomes.
[26]Scotland's Census (2024) Trans status or history (accessed: 11 June 2026).
[27] Stonewall (2018) LGBT in Britain: Trans Report (accessed: 11 June 2026).
[28] Stonewall (2018) LGBT in Britain: Trans Report (accessed: 11 June 2026).

Sexual orientation

Statistics

- **SLAB's data**

No SLAB data available.

- **Data relevant to the policy**

Evidence from SLAB's public involvement research found that gay, lesbian and bisexual participants reported experiencing assumptions about their sexuality and discomfort correcting professionals.

Participants highlighted the importance of engaging with services that understood their needs and experiences. These experiences may affect confidence in engaging with legal services and justice processes.[29]

Evidence on gay men

No specific data available.

Evidence on gay women/lesbians

No specific data available.

Evidence on bisexual people

No specific data available.

Religion or belief

Statistics

- **SLAB's data**

No SLAB data available.

- **Data relevant to the policy**

Evidence suggests that language barriers, cultural differences and varying levels of familiarity with legal systems may affect how some individuals engage with legal processes.

The Equal Treatment Bench Book recognises that communication needs, cultural background and religious considerations can affect effective participation in court proceedings.[30]

Evidence on different religions

Individuals of different religions or beliefs may have cultural or religious practices that require consideration during legal proceedings and may have differing levels of familiarity or confidence in legal institutions.[31]

These factors may influence how effectively an individual can demonstrate that the IOJ test is met, particularly where decisions depend on the communication of personal circumstances or vulnerabilities.

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[29] The Lines Between (2019), Public Involvement in Setting SLAB's Equality Outcomes.

[30] Judiciary of England and Wales (2024) Equal Treatment Bench Book (accessed: 11 June 2026).

[31] Judiciary of England and Wales (2024) Equal Treatment Bench Book (accessed: 11 June 2026).

Pregnancy or maternity

Statistics

- **SLAB's data**

No SLAB data available.

- **Data relevant to the policy**

No evidence found.

Evidence on pregnancy and maternity

The Scottish Courts and Tribunals Service recognises pregnancy and maternity as protected characteristics under the Equality Act 2010 and provides for reasonable adjustments to support effective participation in proceedings.

Pregnancy, maternity and caring responsibilities may also affect an individual's ability to engage with proceedings or meet procedural requirements.[32]

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

Statistics

- **SLAB's data**

No SLAB data available.

- **Data relevant to the policy**

No specific evidence found.

Evidence on marriage and civil partnership

No specific evidence found.

Care Experienced

Statistics

- **SLAB's data**

Care experience status	Percentage of total Summary legal aid applications
Currently looked after by a Local Authority	<1%
Previously looked after by a Local Authority	1%
Never looked after by a Local Authority	6%
Prefer not to say	57%
No data	35%
Grand Total	**100%**

Care experience data is unavailable for a significant proportion of applicants, with most applicants either choosing not to disclose or having no data recorded. Of those whose status was recorded, a

[32] Scottish Courts and Tribunals Service, *Breastfeeding at Court* https://www.scotcourts.gov.uk/coming-to-court/general-information-for-attending-court/breastfeeding-at-court/

small proportion identified as currently or previously having been looked after by a Local Authority. Given the high proportion of missing or undisclosed information, meaningful comparisons with the wider population are limited. Our view is that this reflects data collection and disclosure limitations rather than the actual prevalence of care experience amongst applicants seeking summary criminal legal aid.

Care experience status	Granted	Not granted
Currently looked after by a Local Authority	96%	4%
Previously looked after by a Local Authority	99%	1%
Never looked after by a Local Authority	95%	5%
Prefer not to say	95%	5%
No data	98%	2%
Grand Total	96%	4%

These outcomes relate to summary criminal legal aid applications as a whole and do not isolate decisions on the IOJ test. Applications may be refused for a range of reasons, including financial eligibility, and the figures should not be interpreted as representing IOJ decisions alone.

There is little variation in grant rates according to care experience status. Applicants who reported previously being looked after by a Local Authority appear slightly more likely to receive a grant than other groups, however the numbers involved are relatively small. Grant rates remain consistently high across all categories. Regardless, we are not aware of any other internal evidence or insights which indicate that these differences are likely to reflect a detrimental impact resulting from our policy position.

- **Data relevant to the policy**

No specific evidence found.

Evidence on care experienced people

It is thought that children with care experience are more likely than their peers to experience police contact and criminalisation and are less likely to receive support at the police station from a family or responsible adult. Whilst it is unknown the exact number of care experienced people in the Scottish criminal justice system, a study of HMYOI Polmont in 2017 had over a quarter of those surveyed self-reporting as care experienced.[33]

Another more recent study suggests this may be closer to 60% when considering all the Scottish prisons.[34] These people may come from difficult backgrounds and may have a history of trauma, abuse, and physical or mental health issues that can create extra vulnerabilities.

Care experienced people are overrepresented in the criminal justice system generally. The policy can address the specific vulnerabilities that care experienced applicants may have.

[33] CYCJ (2021) Representing Care Experienced Children & Young People in Police Custody: A Good Practice Guide.
[34] HMIPS (2024) Young People's Experiences of the Scottish Prison System - An HMIPS Analytical Review.

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

The operation of the criminal justice system shows that different equality groups may have different experiences. There is evidence that some groups may face barriers in understanding proceedings or communicating their circumstances. There is also evidence that the consequences of conviction, including impacts on employment and wider personal circumstances, may be experienced differently across groups.

The IOJ test, and the policy on late applications following legislative change, are therefore relevant to equality groups as they determine access to legal representation and provide a mechanism for these factors to be considered.

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:

The evidence demonstrates that equality considerations are relevant to this policy because:

- the statutory IOJ test explicitly includes factors relating to vulnerability, including the ability to understand proceedings
- the policy involves discretionary decision-making in how those factors are applied and weighed
- the assessment of "serious consequences" may engage different outcomes across equality groups
- the "special reason" policy introduces a further area of discretion where procedural barriers may disproportionately affect some groups
- decision-making relies on the ability of applicants and representatives to present relevant information effectively.

In addition, there are identifiable gaps in available data on how different equality groups experience the policy in practice.

On that basis, a full EqIA is required to assess potential impacts in more detail and to consider whether any actions are required to ensure consistent and equitable application of the policy.

Step 3: Stakeholder involvement and consultation

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

Yes.
Awareness raising and stakeholder engagement activity has been undertaken to support

implementation of the new Summary Criminal Legal Assistance arrangements, including publication of guidance and information on the SLAB website. In addition, the underlying legislative changes were subject to consultation by the Scottish Government. We previously consulted on our approach to the IOJ test.

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

- The Criminal Legal Aid and Assistance by Way of Representation (Miscellaneous Amendment) (Scotland) Regulations 2026
- Consultation launched about application of the IOJ test in summary criminal sheriff court proceedings - Scottish Legal Aid Board.

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

The policy area was previously subject to consultation on the application of the IOJ test in summary criminal Sheriff Court proceedings. Feedback from that consultation informed the current policy position that the IOJ test is satisfied in Sheriff Court summary cases.

There is no substantive change to that policy position as part of this review. The current policy transfers into summary criminal legal aid the same factors previously applied in ABWOR and reflects existing practice.

The Scottish Government also consulted on wider summary criminal legal assistance reforms, with the outcomes reflected in the policy note accompanying the Regulations. Internal discussions with operational and policy colleagues confirmed that the proposed approach continues to provide an appropriate framework for decision-making and access to legal assistance.

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?

The policy has the potential for both positive and negative impacts across equality groups due to the discretionary nature of the IOJ and special reason tests. While the policy includes factors intended to address vulnerability and disadvantage, the exercise of discretion means that outcomes may vary depending on how individual circumstances are identified and assessed.

Age

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: Positive impact(s).

The IOJ test explicitly requires consideration of whether an individual can understand proceedings or state their own case, which is directly relevant to age. Younger individuals may have limited

experience or maturity affecting their ability to engage with legal processes, while older individuals may experience cognitive, sensory or physical conditions that affect participation.

The policy therefore has the potential to advance equality by ensuring that these factors are considered when determining whether representation is required. To support this, guidance will continue to emphasise the need for solicitors to provide relevant contextual information and for decision makers to consider age-related vulnerability where it arises.

Disability

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: Positive impact(s).

The available evidence indicates that disabled people, particularly those with mental health conditions, learning disabilities, or neurodivergent conditions, may experience barriers in understanding legal processes and participating effectively within Scotland's justice system. Disability is also considered as part of the statutory IOJ consideration of whether an accused person is "unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise."

We are not aware of evidence that the policy places any additional barriers on disabled applicants or leads to differential outcomes as a direct result of disability.

Our view is that this policy has the potential to have a positive impact on equality as it gives representation to people who may need it to effectively participate with the justice system.

Sex

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: Positive impact(s).

Evidence indicates that women may experience wider consequences from conviction, including impacts on caring responsibilities, housing and financial stability. These factors are relevant to the assessment of "serious consequences" within the IOJ test.

Men, who make up most applicants, may be less likely to disclose vulnerabilities such as mental health issues, meaning that the effective identification and communication of these factors is particularly important.

The policy supports consideration of these circumstances and therefore has the potential to advance equality. This will be reinforced through guidance highlighting the importance of considering wider consequences and ensuring consistent identification of relevant factors across all applicants.

Race

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: Positive impact(s).

Ethnicity and language barriers may be relevant to the statutory IOJ consideration of whether an accused person is "unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise." Minority ethnic groups and migrants may face challenges and barriers around language and communication, culture differences and sensitivities, and the inability to provide necessary documentation requested

We are not aware of evidence that the policy places any additional barriers on ethnic groups or migrants or leads to differential outcomes as a direct result of race.

Our view is that this policy has the potential to have a positive impact on equality as it gives representation to people who may need it to effectively participate with the justice system.

Gender reassignment

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: No impact.

There is limited available evidence linking gender reassignment to outcomes under the IOJ test. The policy applies neutral criteria and does not differentiate based on this characteristic.

However, it is recognised that individuals may be less likely to disclose personal circumstances or may have lower levels of trust in institutions due to previous experiences. The policy will continue to be applied in a way that is sensitive to disclosed vulnerabilities, and this area will be monitored as further evidence emerges.

Sexual orientation

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: No impact.

We are not aware of evidence that the policy has any impact on sexual orientation or leads to differential outcomes as a direct result of it.

Religion or Belief

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: Positive impact(s).

Religion or belief may intersect with factors such as language, cultural understanding and familiarity with legal processes. These elements are relevant to the statutory consideration of whether an individual can understand proceedings or effectively present their case.

The policy has the potential to advance equality by allowing such factors to be considered where relevant. This will be supported by continued emphasis in guidance on recognising communication needs and ensuring that relevant contextual information is considered.

Pregnancy & Maternity

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: No impact.

Pregnancy and maternity may be relevant when considering whether legal representation is in the interests of someone other than the accused, as dependants may be affected. However, women do not make up the majority of accused persons.

Our view is that this policy therefore has low to no impact on pregnancy and maternity or leads to a differential outcome as a direct result of it.

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.

N/A.

Care experience

Potential for discrimination: No impact.
Potential for developing good relations: No impact.
Potential to advance equality: Positive impact(s).

Although care experienced people are over-represented within the criminal justice system, the IOJ test allows decision makers to take account of circumstances which may contribute to vulnerability or disadvantage. The policy therefore has the potential to advance equality by ensuring relevant individual circumstances can be considered, where appropriate.

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:

The assessment confirms that the policy is robust. The statutory framework underpinning the IOJ test already incorporates key safeguards designed to ensure that vulnerability and disadvantage are considered, particularly in relation to an individual's ability to understand proceedings and the seriousness of potential consequences.

The inclusion of discretion within both the IOJ and "special reason" policies provides flexibility to mitigate potential disadvantage, particularly where individuals face barriers in engaging with the process.

No evidence of unlawful discrimination has been identified. However, the assessment has highlighted the importance of ensuring consistency in decision-making and strengthening guidance to support the effective identification and communication of equality-related factors. Ongoing monitoring will also be important to identify any emerging disparities.

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.

The policy and EqIA have been reviewed by operational and policy colleagues as part of the policy review process. The EqIA was reviewed by the GRM on 29 September 2026.

Step 6: Post-implementation actions and monitoring impact

6.1. Record any ongoing actions below

No specific equality actions identified at present. The policy will continue to be monitored through routine policy review and operational feedback to ensure that the IOJ and special reason tests continue to be applied consistently and proportionately.

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)
Monitor trends in IOJ and special reason decisions, including grant and refusal outcomes, to identify any emerging disparities affecting equality groups where data is available.	Criminal Legal Assistance, supported by AMI/data reporting.	Annually to Head of Criminal Legal Assistance as part of routine policy review.
Review operational feedback, complaints and stakeholder feedback relating to the application of the IOJ and special reason tests, particularly where vulnerability or equality-related factors are identified.	Criminal Legal Assistance and Policy & Development.	Through routine policy review and operational governance processes.
Keep relevant equality evidence, research and available management information under review to identify any emerging	Policy Officer (Equalities) and Criminal Legal Assistance.	At EqIA review stage and as new evidence becomes available.

Measure	Lead department or individual	Reporting (where and frequency)
impacts on equality groups and whether policy or guidance updates are required.		

6.3. EqIA review date

14/12/2029.

Step 7: Assessment sign off and approval

Director/SRO sign off: 29/09/2026.

Chief Executive approval: 29/09/2026.