# EQUALITY IMPACT ASSESSMENT (EqIA)

## Summary results of the EqIA

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

Criminal legal aid: prior and retrospective approval for unusual work.

### 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):

Our assessment is that this policy does have relevance to equality groups with regards to age, disability and race in some circumstances, but potentially more broadly. However, we note that comparatively low volumes of applications mean a full analysis of the available data is difficult.

Nonetheless, based on the evidence available to us, our conclusion is that the factors in the policy are framed in such a way that would allow us to take into account requests which relate to a person's protected characteristics (across any of the nine protected characteristics), and that overall, the policy assists in advancing equality of opportunity, with no amendment required.

We note that this is a specific aspect of the legal aid scheme with no obvious comparator, which has meant that it is challenging to find external evidence that speaks directly to the relevance or likely importance of this policy for different equality groups. We also note that there are many forms of unusual work which will have no link to applicants' equality characteristics and associated needs at all.

However, we also note for clarity that an applicant's protected characteristics will not be relevant to our decision-making in and of themselves: these require to be tied into the policy factors which we set out to be considered.

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

No specific actions were identified.

### Ongoing actions beyond implementation include:

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

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

Head of Criminal Legal Assistance.

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

Director of Operations.

| **Publication date (for completion by Communications):** |
| --- |
| 12/11/2026 |

# Step 1: Scoping the work being assessed

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

SLAB's policy on prior approval for unusual work in the context of criminal legal aid sets out how SLAB operationalises the requirements of the relevant Regulations.

The purpose of a policy statement is to identify a definition and a test to be undertaken by decision-makers. The relevant section of the policy statement is set out in full below.

***"Definition***

Our policy on defining 'work of an unusual nature' is that the proposed work must fall into one of either of the following categories in order to require prior approval:

1) The type of work itself is unusual in the context of the case: for example, the type of work proposed would not generally be expected in the particular circumstances of the case, or the type of work is in itself some way novel
2) The type of work is not unusual, but the manner in which it is to be carried out is unusual.

Where a solicitor requires (and obtains) the permission of the court to undertake certain work, even where that work would otherwise fall into the definition above, our policy is that prior approval to undertake unusual work is not required: for example, precognition-on-oath procedure.

### *Test applied to proposed unusual work*

Where the proposed work falls within the definition above, the test we apply in making a decision on whether grant approval is **whether the proposed work is reasonable in all the circumstances of the case.**

We will grant a request to undertake unusual work where it is shown that:

the work might reasonably be expected to assist in the proper preparation and conduct of the case or assist in its resolution (including discontinuation of the proceedings); and

the request shows due regard for economy

### *Relationship with other forms of prior approval*

*Unusually large expenditure*

Where proposed work is unusual in nature, our policy is that the form of prior approval required will always be for unusual work, regardless of the likely cost: for example, if the proposed cost of unusual work is over £2,000, the form of prior approval required is for work of an unusual nature, not unusually large expenditure.

*Counsel / experts*

Our policy is that work to be carried out by an expert or counsel – even where ostensibly unusual in nature - should be covered by prior or retrospective approval to employ the expert or counsel, not prior approval for unusual work.

***Scope of grants***

Our policy is that we may part-grant requests in some cases, to cover only the work reasonable in all the circumstances of the case."

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

Review of policy/process/service/practice.

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

The customer for the purpose of this policy is the assisted person, whose case the proposed unusual work is intended to have some sort of impact on. The extent to which assisted persons' solicitors can undertake unusual work on their behalf will be affected by how we set policy in this area.

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

Currently live.

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

There is a relationship between prior approval for unusual work and the task undertaken by Accounts in assessing work for the purposes of payment.

## 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

We considered a year's worth of applications data in relation to requests for unusual work, which amounted to 170 requests in total.

Around two thirds of requests to undertake unusual work were made in solemn cases, perhaps reflecting potential greater complexity or seriousness of those cases, with the remaining one third from summary cases. It is important to recognise that the number of requests for unusual work is extremely small when compared to the number of grants of criminal legal aid: in solemn legal aid, the number of requests for unusual work is about 1% of the total grants of legal aid, and in summary, the equivalent figure is 0.2%.

There is a degree of subject matter variation: whilst in solemn legal aid, sexual offence cases make up 14% of the grants of legal aid, such cases made up 27% of requests for unusual work. Similarly, whilst murder/attempted murder/culpable homicide cases comprise 2% of solemn grants, they account for

13% of requests for unusual work. In comparison, whilst solemn assault cases account for 31% of grants, they make up only 14% of requests for unusual work. In summary, whilst offensive behaviour cases account for 21% of grants, they comprise 35% of requests for unusual work. Again, assault cases are under-represented in requests for unusual work compared to their prevalence amongst grants. These observations may again correlate with the complexity or sensitivity of different types of cases.

For murder/attempted murder/culpable homicide cases, the figure was 4%, and in summary, the figure for extradition cases was around 10%. Other types of cases were less likely to involve unusual work, particularly assault.

The grant rate for requests for unusual work is low, with only around 28% of requests being granted. This is accounted for in large part by the large number of requests made which are either for the wrong type of prior approval – with around 18% of requests being ones which ought to have been for an expert, rather than unusual work – or where unusual prior approval was not actually required, for example, in most instances where approval is sought for counsel to consult with an expert (9%), and – with greater relevance to equalities – where approval is sought for interpreting or translation costs (16%). The very high rate of refusals relating to the wrong type of approval or unnecessary approvals does complicate analysis of the grant rate – in particular, our ability to clearly identify substantive refusals on the merits, rather than what we might describe as the procedural refusals described above.

The applications data shows a range of subject matters in the requests for unusual work. Whilst a number of these potentially related to an applicant's protected characteristics – for instance requests for appropriate adults – there are many requests in which there is no obvious relevance at all: for instance, requests to access the Police Crime Lab, for counsel to consult with an expert, or for printing costs.

## Age

### *Statistics*

- **SLAB's data**

| Applicant age band (99% disclosed) | Percentage of requests for unusual work | Percentage of applicants for solemn legal aid (2024-25) | Percentage of applicants for summary legal aid (2024-25) |
|---|---|---|---|
| <=24 | 9% | 20% | 16% |
| 25-34 | 23% | 32% | 30% |
| 35-44 | 34% | 29% | 31% |
| 45-54 | 20% | 13% | 15% |
| 55-64 | 11% | 5% | 6% |
| 65+ | 4% | 1% | 1% |
| **Grand Total** | **100%** | **100%** | **100%** |

The table above show that, compared to the profile of applicants for both solemn and summary criminal legal aid, requests for unusual work were slightly more likely to come from persons in the upper age bands: 35-44, 45-54, 55-64, and 65+, with the younger age groups being slightly under-represented. It is unclear what might account for this, though we are not aware of evidence that suggests younger applicants face barriers arising from the policy position that make them less likely to

apply. It may be that variation in, for example, case subject matters and the associated need for unusual work to be undertaken accounts for this.

There are certain special measures for child and adult vulnerable witnesses (which could also include older people who are witnesses) which require our prior approval. Clearly, an applicant's age (and associated vulnerability) may therefore be a factor in whether a special measure (such as use of a commissioner to take evidence) is requested, and thus whether our prior approval is required. (We note that age is not *necessarily* relevant to whether special measures are required, however).

| Applicant age band | Granted | No decision | Refused | Grand Total |
|---|---|---|---|---|
| <=24 | 40.00% | 6.67% | 53.33% | 100.00% |
| 25-34 | 23.08% | 17.95% | 58.97% | 100.00% |
| 35-44 | 31.03% | 17.24% | 51.72% | 100.00% |
| 45-54 | 21.21% | 15.15% | 63.64% | 100.00% |
| 55-64 | 27.78% | 16.67% | 55.56% | 100.00% |
| 65+ | 50.00% | 0.00% | 50.00% | 100.00% |
| **Grand Total** | **28.40%** | **15.38%** | **56.21%** | **100.00%** |

The table above shows that there is a degree of variation in the grant and refusal rate for requests for unusual work by age. In particular, the grant for both the youngest and oldest applicants appears to be higher, with those in the 25-34 and 45-54 age bands having a lower grant rate. However, it is difficult for us to analyse whether this variation reflects meaningful differential impacts in the operation of the unusual work policy, as opposed to differences in the types of requests being made by age group. A proportion of refusals arise because the request should have been submitted under a different approval route rather than as unusual work. This appears to be the most likely explanation for the observed variation by age. For applicants aged 45-54, around 24% of total requests were those which should have related to an expert – and which are uniformly refused – compared to around 18% across all applications.

In the absence of any broader information (for example, complaints or broader Operational insights) that suggests this variation does possibly reflect discriminatory impact, we do not believe there is evidence to suggest a need to change the policy.

**Data relevant to the policy**

***Evidence on different age categories***

In the UK, evidence suggests that people in their 20s are most likely to be convicted of crimes, with the "peak age for criminal convictions is 21-25 for males and 26-30 for females."[1] We could infer from this that this age bracket is also more likely to be involved in criminal in the first place. However, this does not align directly with the initial table above, which suggests requests for unusual work are more likely to come from slightly older age groups. It may be that this is accounted for by variation in case subject matter: if younger applicants are more likely to be involved in for example, assault cases – where requests for unusual work are less prevalent – that would account for this difference.

We are aware of external research on issues faced by children and other vulnerable people in engaging with legal proceedings and adaptations which can be made in order to facilitate their

[1] BBC Bitesize, Who commits crime? - Impact of crime on victims, offenders and their families - Higher Modern Studies Revision.

evidence being given in an appropriate way: for instance, research in relation to the 'Bairns Hoose' initiative suggests that special measures for child witnesses are in line with trauma-informed practice and can avoid re-traumatisation of children involved in legal proceedings, and are intended to be child-friendly in a way that supports the reliable giving and collecting of evidence.[2] Some of these measures could potentially require prior approval for unusual work, in particular, where evidence is to be taken by commission, but outwith the court estate. It is also important to note that many common special measures (such as expert-recommended breaks during evidence) do not require unusual work approval and therefore fall outwith this policy.

## Disability

### *Statistics*

- **SLAB's data**

| Applicant disability status (36% disclosed) | Percentage of requests for unusual work |
|---|---|
| Disability | 24.59% |
| No disability | 75.41% |
| **Grand Total** | **100.00%** |

It is important to note that for disability, the disclosure rate amongst the applications data is low, at around 36% of the total, which may obscure the true picture. That being said, the profile of applications for unusual work looks broadly in line with data from 2022 Scottish Census data and a Family Resources Survey for 2022-23, which found that the percentage of Scottish people with a disability was between 21.4% and 27%.[3] UK House of Commons research puts that number at 28% of the population in Scotland.[4]

| Applicant disability status | Granted | No decision | Refused | Grand Total |
|---|---|---|---|---|
| Disability | 13.33% | 20.00% | 66.67% | 100.00% |
| No disability | 30.43% | 13.04% | 56.52% | 100.00% |
| **Grand Total** | **26.23%** | **14.75%** | **59.02%** | **100.00%** |

The table above shows that the grant rate for disabled applicants requests for unusual work is considerably lower than for non-disabled applicants. However, our view is this variation can be readily explained and does not reflect a discriminatory impact arising directly because of disability: on terms of the types of request being made, disabled applicants were considerably more likely to make a request that should have been made under the expert witness approval process (33% of their total requests versus 18% for non-disabled applicants), rather than unusual work**.**

However, people with disabilities were (slightly) more likely to seek an appropriate adult, as might be expected, and which would be relevant for consideration under this policy. We also note that in a small number of cases, requests were made for an additional solicitor in which an applicant's disability appeared to have at least some relevance: this could be for instance because of the additional complexity such a disability means for the preparation of the case or the legal points involved.

[2] Bairns Hoose, Support measures for child victims and witnesses in connection with giving evidence in criminal cases (2025).
[3] Scottish Government (2025), Chapter 2: Data about disabled people in Scotland - Disability Equality Plan Equality Impact Assessment Executive Summary.
[4] House of Commons Library (2025), UK disability statistics: Prevalence and life experiences.

Finally, as our published guidance makes clear, we note that some forms of special measures for children and vulnerable witnesses require our prior approval under this policy: for example, where a witness is to evidence via a video link from a location outwith the SCTS estate, or where a commissioner is taking evidence. In such cases, an applicant's disability (possibly intersecting with age) could well be relevant in our considerations. It is important to note, however, that not all forms of special measures require our prior approval.

- **Data relevant to the policy**

### *Evidence on different disabilities*

- **Physical disabilities**

No specific evidence found.

- **Learning disabilities**

Where a supporter is appointed by the court to assist an accused person (for example, due to mental health or psychological vulnerabilities), this falls within the scope of unusual work. Approval is required not because SLAB is assessing the "merit" of the support per se (given the court's role in having appointed such a support), but to ensure the appropriateness of the specific person proposed to act as a supporter.

- **Mental health**

Data suggests that evidence about an applicant's mental health can often be highly relevant to proceedings. In the United States, psychological evaluations and descriptions of a disability can address matters such as competency, criminal culpability, and other matters about whether such a disability could have had a causal or contributory role in alleged criminal actions.[5]

We infer that this is likely the case in Scotland as well, though it is difficult to quantify the extent to which this policy is relevant (possibly via requests for second solicitors) – our policy on experts is likely to have a more significant relevance.

## Sex

### *Statistics*

- **SLAB's data**

| Applicant sex | Percentage of requests for unusual work (summary) | Percentage of applications for summary LA (24/25) | Percentage of requests for unusual work (solemn) | Percentage of applications for solemn LA (24/25) |
|---|---|---|---|---|
| Female | 13% | 21% | 13% | 10% |
| Male | 77% | 79% | 79% | 90% |
| Prefer not to say | 10% | N/A | 8% | N/A |
| **Grand total** | **100%** | **100%** | **100%** | **100%** |

[5] Berryessa, C. M. (2017). Educator of the court: The role of the expert witness in cases involving autism spectrum disorder. *Psychology, Crime & Law*, *23*(6), 575-600, at 2.

Overall, men make up a very large majority of requests for unusual work, much as they make up most applications and grant for criminal legal aid. The table above shows that for summary legal aid, the proportion of requests for unusual work from women is slightly low compared to the proportion of applications for summary legal aid made by women; in contrast, in solemn, women are slightly over-represented in volumes of requests for unusual work compared to the profile of applications for solemn legal aid. However, these differences do not appear to be particularly large.

| Applicant sex | Granted | No decision | Refused | Grand Total |
|---|---|---|---|---|
| **Female** | **29.41%** | **23.53%** | **47.06%** | **100.00%** |
| *Solemn* | 40.00% | 40.00% | 20.00% | 100.00% |
| *Summary* | 14.29% | 0.00% | 85.71% | 100.00% |
| **Male** | **25.24%** | **14.56%** | **60.19%** | **100.00%** |
| *Solemn* | 27.87% | 19.67% | 52.46% | 100.00% |
| *Summary* | 21.43% | 7.14% | 71.43% | 100.00% |
| **Prefer not to say** | **33.33%** | **16.67%** | **50.00%** | **100.00%** |
| *Solemn* | 37.50% | 12.50% | 50.00% | 100.00% |
| *Summary* | 25.00% | 25.00% | 50.00% | 100.00% |
| **Grand Total** | **26.52%** | **15.91%** | **57.58%** | **100.00%** |

The overall grant rate for men and women was very similar. Within procedure types, there is a degree of variation, with for example, women being comparatively more likely to be granted approval for unusual work within solemn proceedings, but less likely within summary proceedings. Given the relatively low numbers in some cells, we are unable to test the data above for statistical significance.

- **Data relevant to the policy**

### *Evidence on women*

In 2019-20, key differences in the characteristics of women prisoners compared to men are:[6]

- a more steeply peaked age distribution around ages 30-44 (59% versus 46%). Men have larger proportions in both younger (under 30) and older (45+) age bands
- higher proportions are married (23% versus 15%). Women in prison were less likely to be single (70.5%) or divorced/separated (4.4%) than men (78.7% and 5.7% respectively)
- slightly more identifying as Asian, and fewer as African, Caribbean or Black
- slightly higher rates of self-reported disability (10% versus 9%).

The Equality and Human Rights Commission found that: [7]

- female prisoners experience higher rates of mental ill health than male prisoners; but experience poorer access to treatment
- modelling of the prison population estimated prevalence of long-term mental health conditions, self-harm and anxiety are higher for women than men.

This data highlights known intersections between sex, ethnicity and mental health in the criminal justice system. However, we found no evidence that applicants' sex influences whether they request unusual work or how such requests are assessed.

[6] Scottish Government, Safer Communities Directorate (2022), Women in the justice system: evidence review, 4. Patterns of offending and the justice system response.
[7] Equalities and Human Rights Commission (2023), Justice and personal security: Scotland, at 2.

Women were typically dealt with for less severe offences at court. This is reflected in our applications data, which shows that women are more likely to appear in summary proceedings than men. Data from England and Wales supports this distinction: of all female defendants prosecuted at court, 14% were prosecuted for indictable offences compared to 26% of male defendants in the latest year."[8]

In general terms, we did not find evidence that applicants' protected characteristic of sex is specifically relevant to certain forms of unusual work.

### *Evidence on men*

External evidence reflects the point in our data that a large majority of requests were from male applicants. UK Government data from 2023 assert that the overwhelming majority of those in the Criminal Justice System that year were men: "22% of individuals dealt with by the Criminal Justice System were female, and 78% were male." [9]

## Race

### *Statistics*

- **SLAB's data**

SLAB's most recent criminal applicant survey reported the following breakdown by ethnic origin (1):

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

[8] Ministry of Justice (2025), Statistics on Women and the Criminal Justice System 2023.
[9] Ministry of Justice (2025), Statistics on Women and the Criminal Justice System 2023.

| **Applicant race** (55% disclosed) | **Percentage of requests for unusual work** |
|---|---|
| White majority | 38.30% |
| White minority | 4.3% |
| Non-white ethnic minority | 2.1% |
| Prefer not to say | 55.3% |
| **Grand Total** | **100.00%** |

The table above shows that for this protected characteristic; we have a very high rate of 'prefer not to say' (as well as a large gap in disclosure). This accounts for each of the other categories – in particular White majority – appearing to be under-represented compared to population level figures: the Scottish Survey Core questions data for 2023 shows a combined total for the White majority groups being >85%, for instance. The high rate of prefer not to say makes it challenging to draw any conclusions about the profile of persons requesting approval for unusual work. However, we are not at present sighted to any evidence suggesting that persons from groups face specific barriers to applying caused by our policy position.

| **Applicant race** | **Granted** | **No decision** | **Refused** | **Grand Total** |
|---|---|---|---|---|
| White majority | 38.89% | 16.67% | 44.44% | 100.00% |
| White minority | 25.00% | 0.00% | 75.00% | 100.00% |
| Non-white ethnic minority | 0.00% | 0.00% | 100.00% | 100.00% |
| Prefer not to say | 19.23% | 11.54% | 69.23% | 100.00% |
| **Grand Total** | **26.60%** | **12.77%** | **60.64%** | **100.00%** |

With regards to grant rate, there is clearly a level of variation by race; in particular, the rate of refusals for both white minority applicants and non-white minority applicants being higher than for white majority applicants. However, as with disability, our view is this does not reflect substantive problems with the operation of this policy in relation to this protected characteristic. Our assessment of the data suggests that this variation is accounted for by the types of unusual work requested and whether such work requires unusual prior approval (given that, if not, it is liable to be refused). Applicants in both the white minority and non-white minority groups were more likely to request approval to undertake interpreting/translation, which generally does not require prior approval: these requests were refused, accounting for the variation in grant rate.

More broadly, it is not obvious that there are types of work which might be sought under the ambit of this policy in which an applicant's race is likely to be directly relevant.

- **Data relevant to the policy**

***Evidence on different ethnicities***

No specific evidence found.

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

As noted above, amongst the requests for unusual work were several requests for interpreting or translation: indeed, these formed the second largest thematic grouping, at around 16% of the total requests. There are some very limited circumstances in which prior approval for an interpreter or translation may be required – for instance, where the rates sought are beyond those generally expected, perhaps because of the rarity of the language – but in general terms, it is crucial to note that interpreting and translation does not require prior approval at all. This accounts for the high rate of refusals for this type of work, and therefore for some groups within this protected characteristic.

## Gender reassignment

### *Statistics*

- **SLAB's data**

No specific data available for this protected characteristic.

- **Data relevant to the policy**

### *Evidence on trans people*

No specific evidence found.

## Sexual orientation

### *Statistics*

- **SLAB's data**

No specific data available for this protected characteristic.

- **Data relevant to the policy**

### *Evidence on gay men*

No specific evidence found.

### *Evidence on gay women/lesbians*

No specific evidence found.

### *Evidence on bisexual people*

No specific evidence found.

## Religion or belief

### *Statistics*

- **SLAB's data**

No specific data available for this protected characteristic.

- **Data relevant to the policy**

### *Evidence on different religions*

No specific evidence found.

## Pregnancy or maternity

### *Statistics*

- **SLAB's data**

No specific data available for this protected characteristic.

- **Data relevant to the policy**

### *Evidence on pregnancy and maternity*

No specific evidence found.

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

### *Statistics*

- **SLAB's data**

Not relevant for the purposes of this EqIA.

- **Data relevant to the policy**

### *Evidence on marriage and civil partnership*

N/A.

## Care Experienced

### *Statistics*

- **SLAB's data**

SLAB's most recent criminal applicant survey reported the following breakdown of applicants by care status.

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

[10]

| **Applicant experience of care?** (55% disclosed) | **Percentage of requests for unusual work** |
|---|---|
| Yes | 2.13% |
| No | 21.28% |
| Prefer not to say | 76.60% |
| **Grand Total** | **100.00%** |

In comparison to the (older) data seen in the criminal applicant survey above, there is a much higher rate of prefer not to say and considerably lower rates of applicants indicating they had experience of care. This is also in the context of a large gaps in disclosure of this characteristic in the first place.

The figures above suggest that care-experienced people may be slightly over-represented among applicants for criminal legal aid more generally, given that those who have been in care make up only around 0.5% of the general population. Given the limitations of the applications data, however, we are unable to draw any robust conclusions about the profile of applications with regards to this characteristic. In any event, we expect that the high levels reflect high levels of involvement in criminal proceedings generally, rather than a specific importance with regards to this characteristic per se.

The numbers involved are too low to allow for reporting and meaningful analysis of grant rate.

- **Data relevant to the policy**

### *Evidence on care experienced people*

There is a body of evidence which clearly sets out the extent to which care-experienced people are over-represented in Scotland's criminal justice system: for instance, "Who Cares?" Report that:[11]

[10] SLAB criminal applicant survey 2018-19.
[11] Who Cares? Scotland (2018), Who Cares? Scotland's Report on the Criminalisation of Care Experienced People at 1.

"*Care leavers are overrepresented in the criminal justice system in Scotland, with a third of those surveyed in HMYOI Polmont in 2015 self-reporting as care experienced. In 2014, 50% of prisoners in Scotland identified as having been in care at some point in their life and a report published in 2013 identified that a third of young offenders had experienced living in care. Furthermore, statistics reveal that although those who have been in care only make up an estimated 0.5% of the general population, they make up 33% of Scotland's youth offender population and 31% Scottish adult prisons.*"

Research by the Howard League found that "*looked-after children are disproportionately criminalised compared to other children, particularly those living in residential care [...] They are less likely to receive support from family members or another trusted adult at the police station, which can adversely affect them*."[12] This suggests that people with experience of care may be more likely to be involved in criminal proceedings overall, but we found no evidence that care-experienced applicants are more likely to require or request unusual work under this policy.

We are not aware of instances in which a request for unusual work specifically relates to an applicant's experience of care in and of itself. We also recognise the broad external evidence available concerning societal outcomes for people with experiences of care: for instance, a Scottish Government paper on outcomes noted that "*across the available evidence, care experienced children and young people experience markedly poorer health and wellbeing outcomes than the general population. Elevated risks were observed for mortality, psychiatric admission, self-harm, substance use, and hospitalisation.*"[13]

## 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 scope of work which could potentially be requested under this policy is very wide: hypothetically, work which has a bearing on an applicant's protected characteristics could be within scope. In practice, we saw fairly few forms of requests in which a direct link could be drawn: these included requests for appropriate adults, for instance. Our guidance is clear that special measures – again relating to disability and possibly age – would also fall within the scope of this policy. There is potential relevance and importance for at least some protected characteristic groups, though the evidence suggests that in a large majority of requests, the applicant's protected characteristics have no relevance at all.

In assessing the impact of this policy – and in particular, reviewing the grant rates by protected characteristics where data is available – we have noted a number of data points which on the face of things, might suggests problematic impacts arising from the policy position: for example, the much lower grant rate for non-white ethnic minority applicants and for disabled applicants. Our assessment is that these differences do not reflect problematic equalities impacts arising from the specific policy position set out but instead reflect misunderstandings on the part of solicitors as to when prior approval is required, which happen to be more prevalent for these groups given the types of work for which approval is sought.

---

[12] Howard League for Penal Reform (2019), Representing looked-after children at the police station: a step-by-step guide for lawyers at 1.
[13] Scottish Government (2025), Longitudinal quantitative evidence review for Keeping The Promise: health and wellbeing of care experienced children and young people at 1.

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

**Please select your decision**: Proceed to Step 3 - complete full EqIA.

**Please outline the reasoning behind your decision**:
Given the conclusion above as to the relevance of this policy to protected characteristic groups, a full EqIA is required.

## Step 3: Stakeholder involvement and consultation

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

No.

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

N/A.

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

N/A.

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

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

#### Cross-cutting evidence

Our view is that outcomes of this policy will primarily be driven by legal and practical issues at play in the case, rather than by the applicant's protected characteristics in and of themselves, other than in very limited circumstances. The policy is not designed to assess an applicant's vulnerability or needs arising from their protected characteristics in themselves; it simply provides a mechanism to authorise unusual forms of work where they assist case preparation and where approval is required by regulation.

It is important to note that our decision-making in relation to any specific request to undertake unusual work is driven by considering how far such work could advance the case and whether due regard to economy has been demonstrated with regards to the likely costs. Our assessment is that an applicant's protected characteristics will only be directly relevant to such considerations in rare circumstances.

SLAB has a wide degree of discretion available in terms of its policy on prior approval for unusual work. The factors that appear in the agreed policy are broadly framed. Our assessment is that they are framed in such a way that – where relevance to the factors is demonstrated – issues relating to any of

the protected characteristics with regards to possible need to undertake unusual work can be considered. In incorporating such a degree of flexibility, our view is that the policy position advances equality of opportunity.

## Age

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

As set out under section 2, we acknowledge that there is variation in the grant rate for unusual work when looked at by age bands. However, we do not see a causal relationship between applicant age per se and this variation in the grant rate: we are not aware of broader evidence (for example, complaints) which suggests a potentially discriminatory impact on age as a result of our policy position, and as such, have identified no impact that requires to be mitigated.

In terms of relevance, we recognise that the availability of certain special measures could have a direct relevance to age (particularly to children). More broadly, as noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

## Disability

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

As we set out under section 2, there are some forms of unusual work in which there does appear to be a potentially direct link between an applicant's disability and a request being made: in particular requests for appropriate adults, and more indirectly, (some) requests for multiple solicitors. Requests for funding of a supporter as a special measure would also be relevant.

We have considered whether removing the requirement of prior approval for court-approved supporters etc. would be appropriate, given the high grant rate for this form of work, and the direct link to applicants' protected characteristics: this could potentially advance equality of opportunity by removing an administrative burden for people with disabilities. However, having considered the matter, our view is it is important to retain a control, to ensure that any supporter employed by the applicant is appropriately qualified.

We noted that the grant rate for people with disabilities appears significantly lower than for people without but have explained that this results from misunderstandings about the scope of the policy rather than substantive impacts arising from how the policy position affects people with disabilities. Where the court appoints a supporter, prior approval ensures suitability of the proposed supporter rather than assessing the substantive need for support.

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

## Sex

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

We note in section two that the grant rate for unusual work is similar for both men and women. Therefore, it appears reasonable to assume no adverse impact relating to our decision-making under this policy. We did not see any evidence that the access to approval for unusual work is significantly more challenging for either men or women, and nor are we currently aware of any specific instances in which our policy has resulted in a problematic barrier because of their protected characteristics.

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

## Race

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

We set out the limited range of evidence available to us in relation to race in section 2, which included what appear to be a significant degree of variation in the grant rate. As explained under section 2, our assessment is that the variation in grant rate does not reflect problematic impacts arising as a result of the policy position but instead reflects patterns in the types of work sought and the circumstances in which prior approval is required. Overall, we are not currently aware of any evidence that shows specific barriers for any of the groups within this protected characteristic arising because of our policy position.

It is important to bear in mind that interpreters are not generally subject to our policy on unusual work, approval not being required: approval would only be required in very narrow circumstances, for instance for a rare language where an interpreter cannot be employed at the standard legal aid rates. (Separately, approval would be required under our 'unusually large expenditure' policy for interpretation or translation costs above £2,000.)

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

## Gender reassignment

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

We did not find any evidence that indicated a specific relevance of unusual work with regards to this protected characteristic, or which suggests that applicants are more or less likely to seek and to be granted approval to undertake unusual work depending on their gender reassignment status.

However, nor are we aware of any current issues. There are no known adverse impacts to be mitigated.

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

## Sexual orientation

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

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

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

## Religion or Belief

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

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

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

## Pregnancy & Maternity

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

We did not find any evidence that indicated a specific relevance of unusual work with regards to applicants' pregnancy or maternity status, or which suggests that for example, applicants who are pregnant are more or less likely to seek and to be granted (or refused) approval to undertake unusual work. However, nor are we aware of any current issues. There are no known adverse impacts to be mitigated.

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

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

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

Not relevant for the purposes of this impact assessment.

### Care experience

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

As set out under step 2, whilst we are aware of evidence that shows that people with experience of care are over-represented in the criminal justice system, we found no specific evidence or data that allows us to see a clear linkage between applicants with this protected characteristics and particular forms of requests for unusual work. In broad terms, we are not aware of any current issues with regards to how this policy operates in relation to this protected characteristic. There are no known adverse impacts to be mitigated.

As noted above, in the 'cross cutting' section, our assessment is that the factors set out within the policy are broad enough to allow for issues relating to any protected characteristic to be taken into account where relevance can be demonstrated; and that this means that the policy has a positive impact with regards to equality of opportunity.

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

**Please select the outcome of the assessment**: Confirm that the policy/practice/process/service described in section 1.1 was robust.

**Please explain the changes that have been made**:
Given the assessment above, our view is that no changes are required to this policy.

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

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

Discussions with lead Operational staff, March 2026, followed by consideration by senior leadership staff at GALA Review meeting on 16 March 2026.

# Step 6: Post-implementation actions and monitoring impact

## 6.1. Record any ongoing actions below

No ongoing actions at present.

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

| Measure | Lead department or individual | Reporting (where and frequency) |
|---|---|---|
| Analysis of numbers of requests, grants, and refusals for unusual work broken down by protected characteristics. | AMI (data extraction) with Policy (analysis). | Once per review cycle. |

## 6.3. EqIA review date

26/02/2029.

# Step 7: Assessment sign off and approval

**Director/SRO sign off**: 26/02/2026.
**Chief Executive approval**: 26/02/2026.

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