

# EQUALITY IMPACT ASSESSMENT

## SUMMARY

**Title of policy, project or function:**

Revised contact guidance

**Is the policy, project or function new (proposed) or already exists?**

Already exists

**Has a screening exercise been carried out before this full assessment?**

Yes

**Key findings from the assessment:**

The policy is in relation to applications for civil legal aid to pursue and defend actions brought before the courts seeking contact to a child or children. It also applies to individuals who are seeking legal aid to enter proceedings as third party minuters or on behalf of the children. SLAB has existing guidance in place in relation to the approach taken to applications for civil legal aid to both pursue and defend contact actions. This guidance will extend what is already in place and will clarify and strengthen certain aspects of that guidance. The changes are to ensure so far as is possible that only those applications for civil legal aid that merit public funding to resolve a dispute in the civil court receives such funding.

There continued to be substantial numbers of applications lodged in respect of contact proceedings. It is important that any funding is made available for such a dispute is reasonable but also that the dispute itself is one that can only be resolved in court and that merits the use of court time as a proportionate response to the difficulties involved. Where a dispute over contact is being funded at public expense it is important that the scale of the dispute warrants the intervention of the court and that there is no other possible means of resolving the dispute.

This policy changes the approach that will be taken to the examination of civil legal aid applications for contact proceedings in ways which will impact on male and female pursuers and male and female defenders. However the vast majority of pursuers in such actions are male as detailed in this EQIA. As such it may be that this policy which introduces more robust tests to be met before accessing public funding may have more of an impact on males so far as bringing an action is concerned while the impact of the revised guidance will be of more significance for females. There may be a differential impact on different genders in certain situations because of the different issues that will fall to be considered in the assessment of eligibility tests. This does not mean that this differential impact is not justified. The new tests are put in place to reduce the potential for unnecessary and often damaging litigation over disputes about contact with children.

This changed approach is an opportunity to promote positive impacts for children as it may have the benefit of obliging parties who have a child or children together

to work constructively to resolve any disputes without the intervention of the court. This is likely to have a positive impact on any children that may be involved in the dispute for whom long running family litigation is likely only to increase tension and not necessarily be in their best interests. It is also more likely to be helpful in improving the relationship between parents (or others involved in a dispute over contact issues) than taking the dispute to court.

**Actions as a result of the assessment:**

No immediate action is needed but in light of the findings in relation to the possibility of indirect discrimination in relation to Sex (gender) - see details in EQIA - we will undertake specific monitoring of applications in this category and take action if this is needed.

**Date impact assessment published:**

2015

**Lead official(s) responsible for assessment:**

Catriona Whyte

**Department:**

Operations

**Name of sponsor/ Director who has signed off that the policy/ function has been sufficiently assessed against the needs of the equality duty:**

Marie-Louise Fox

**Date of sign off:**

3 September 2015

## **Step 1 - Examine the information available to assess likely impact of the function/ policy on different equality groups**

### **1.1 Describe the policy, project or function. What does it aim to do? What and who will it affect? *You can update or use information from your screening assessment if one was completed.***

The policy is in relation to applications for civil legal aid to pursue and defend actions brought before the courts seeking contact to a child/children. It also applies to individuals who are seeking legal aid to enter proceedings as third party minuters or on behalf of the children.

It will affect those applying for civil legal aid for contact proceedings whether they are parents, children, grandparents or other individuals who are entitled to seek an order for contact from the courts. SLAB has existing guidance in place in relation to the approach taken to applications for civil legal aid to both pursue and defend contact actions. This guidance will extend what is already in place and will clarify and strengthen certain aspects of that guidance. The changes are to ensure so far as is possible that only those applications for civil legal aid that merit public funding to resolve a dispute in the civil court receives such funding. It will require a far greater level of pre-litigation negotiation in an attempt to resolve a dispute without taking the matter before the court including, but not restricted to -

- direct communication between parties to the dispute;
- communication between the solicitors acting for any parties involved in the dispute;
- examination of options such as supervised contact; and
- consideration of other methods of resolving a dispute such as mediation or arbitration.

The revised policy will also discourage litigation where there is no dispute about whether or not contact should take place but rather where the dispute is restricted to how much and how often such contact should operate. The policy will also strengthen the examination of what an individual would do in terms of litigation if they were faced with the same circumstances but had to fund their own litigation privately.

The years since 2009 saw a substantial increase in the number of applications for civil legal aid for family related proceedings where there was an increase in applications of over 25%. Costs for family cases have also increased over the period significantly since 2004/5. In 2004/5 expenditure in family cases was £16.3 million while in 2012/13 it was £23.5 million. This is an increase of 44%. While costs have subsequently reduced to a degree the costs remain well in excess of £20 million per year.

Of the costs incurred in family expenditure in the sheriff court the highest single area of expenditure was in relation to grants of civil legal aid for contact cases. In 2013/14 £7.2 million was spent on contact disputes in the sheriff court. A total of 2,854 final accounts were paid and of these fewer than 10% (280 accounts) used up just short of 38% of the total expenditure in contact cases.

There continued to be substantial numbers of applications lodged in respect of contact proceedings. It is important that any funding is made available for such a dispute is reasonable but also that the dispute itself is one that can only be resolved in court and that merits the use of court time as a proportionate response to the difficulties involved.

What SLAB is undertaking in examining the behaviours of a number of individuals in receipt of civil legal assistance has identified a variety of drivers that increase the cost of the dispute and result in disproportionate levels of court time being utilised in trying to resolve that dispute. In 2012 the Supreme Court issued a judgment in NJDB -v- JEG and another in which comment was made on the cost of the proceedings which were described as being wholly disproportionate to the issues that had to be resolved with an additional comment being made that it was inconceivable that any reasonable person would expend resources on such a scale on a dispute over contact if the money had been coming out of his/her own pocket.

Where a dispute over contact is being funded at public expense it is important that the scale of the dispute warrants the intervention of the court and that there is no other possible means of resolving the dispute.

**1.2 What is known about each of the equality groups who might use or be affected by this policy? For evidence see [Scottish Government equality finder](#) (contains information on equality groups and the justice system), the SLAB shared drive - information on the different groups (contains other information on equality groups) and [SLAB's research webpage](#) for information on the demographics of applicants of legal aid and solicitors providing work under legal aid.**

*You need to look at the evidence you have for each group - Race, Sex (gender), Gender Reassignment, Disability, Sexual Orientation, Pregnancy & Maternity, Age, Religion and Belief, and Marriage & Civil Partnership. Think about the people likely to be affected by the policy. Does the policy relate to functions that have been identified as being important to particular protected groups? Does it relate to an area where there are already known inequalities? Good evidence is required for you to show 'due regard'. An inadequate analysis in an assessment may mean failure to meet the general duty.*

## Gender

Information held by SLAB about applicants for civil legal aid in contact disputes shows that those seeking to bring an action for contact are more likely to be males while those seeking to defend such an action are more likely to be females. In 2013/14 a total of 3,801 applications in respect of contact proceedings were received. Of these 1,703 applications were submitted by females while 2,098 were submitted by males. Of those applications females submitted 1,376 applications to defend proceedings while males submitted 188 applications to defend contact proceedings. Conversely males submitted 1,842 applications to initiate contact proceedings while females submitted 247 applications to initiate such proceedings. In 2014/15 a total of 3,519 applications were received of which 1,614 came from females and 1,905 from males. There were 1,307 female defender applications and 160 male defender applications. There were 1,685 applications for males to initiate proceedings and 230 applications from females to defend proceedings.

## Age

Age arises a potential issue because the nature of contact proceedings involves issues concerning children or individuals who are under 16 years of age. It is not possible for an action of contact to be taken where an individual, who is the subject of the contact order, is older than 16 years. In Scotland on census day in 2011 there were 916,331 people aged under 16. A total of 469,106 were males while 447,225 were females. While the child is unlikely to be a party to any dispute in court it is in their best interests that the court action is seeking to promote and protect and the court is not in a position to make any order where it would not be shown to be in the best interests of the child. Information held about applications for civil legal aid submitted on behalf of those under 16 seeking to be represented in contact disputes shows that a total of 55 such applications were received in the years 2013 to 2015. Reducing the scope for potentially unnecessary litigation is likely to be a positive outcome for the children at the centre of such disputes particularly if the changed approach to assessing applications leads to a stronger drive to settle disputes by negotiation rather than litigation.

In addition a number of applicants for civil legal aid will be grandparents seeking contact with grandchildren. This may mean that age aspects fall to be considered more broadly than simply those impacting on children under 16 year of age.

### **1.3 Are there any gaps in understanding of your policy/ function in relation to equality groups? *You should think about opportunities to fill any gaps in evidence through your consultation plans for the policy/ function at Step3.***

No significant gaps identified.

## Step 2 - Impacts on priority characteristics and suggested steps to address these

Does the policy/ function have any impacts (whether intended or unintended, positive or negative) on any of the equality groups? Describe for each group the ways in which the policy, as it is planned or as it operates, might have negative and/ or positive impacts. You should answer these three questions for each group:

- 1) Is there potential for discrimination?
- 2) Is there potential for developing good relations?
- 3) Is there potential to advance equality of opportunity?

### Race

Is there any potential impact on this group? No

*Please explain your answer:*

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of applications is not one that can be viewed as either putting in place barriers or improving the position for applicants.
2. Not applicable
3. Not applicable

### Sex (gender)

Is there any potential impact on this group? Yes

*Please explain your answer:*

This policy changes the approach that will be taken to the examination of civil legal aid applications for contact proceedings in ways which will impact on male and female pursuers and male and female defenders. However the vast majority of pursuers in such actions are male as detailed in the statistical information set out in this EQIA. As such it may be that this policy which introduces more robust tests to be met before accessing public funding may have more of an impact on males so far as bringing such actions are concerned. The revised guidance will also have a differential impact on females where legal aid is being sought

to defend an action. There may therefore be differential impacts on different genders because of the different issues that will fall to be considered in the assessment of eligibility tests. This does not mean that these differential impacts are not justified. The new tests are put in place to reduce the potential for unnecessary and often damaging litigation over disputes about contact with children.

The changes proposed mean that parties will be expected to undertake serious attempts to negotiate disputes without resorting to court litigation. Parties will also be expected not to go to court over relatively modest issues where there is at least the potential for taking forward some initial steps to agreeing a programme for contact. Parties will also not be able to seek to defend an action for contact where there are no good reasons advanced suggesting that a pursuer is unlikely to obtain an award for at least some form of contact from the court. It is considered that this changed approach to determining whether allowing public funding is reasonable is an opportunity to promote positive impacts for children in that the policy has the benefit of seeking to make parties who have a child or children together work constructively to resolve any disputes without the intervention of the court, with its ability to exacerbate tensions between individuals. This is likely to have a positive impact on any children that may be involved in the dispute for whom long running family litigation is likely only to increase tension and not necessarily be in their best interests. It is also more likely to be helpful in improving the relationship between parents (or others involved in a dispute over contact issues) than taking the dispute to court.

1. Yes, indirect discrimination with respect to men and women depending on their interest in the case. However SLAB has determined that the overall impact of the policy is positive as detailed above.

2. Not applicable

3. Not applicable

### **Gender reassignment**

Is there any potential impact on this group? No

*Please explain your answer:*

This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of applications is not one that can be viewed as either putting in place barriers or improving the position for applicants.

1. No

2. Not applicable

3. Not applicable

**Disability**

Is there any potential impact on this group? No

*Please explain your answer:*

No. This policy shows no indication of positively or negatively affecting applicants for civil legal aid under this protective characteristic. The approach to be taken to the assessment of applications is not one that can be viewed as either putting in place barriers or improving the position for applicants.

1. No

2. Not applicable

3. Not applicable

**Pregnancy and maternity**

Is there any potential impact on this group? No

*Please explain your answer:*

No. This policy shows no indication of positively or negatively affecting applicants for civil legal aid under this protective characteristic. The approach to be taken to the assessment of applications is not one that can be viewed as either putting in place barriers or improving the position for applicants.

1. No

2. Not applicable

3. Not applicable

**Religion and belief**

Is there any potential impact on this group? No



*Please explain your answer:*

No. This policy shows no indication of positively or negatively affecting applicants for civil legal aid under this protective characteristic. The approach to be taken to the assessment of applications is not one that can be viewed as either putting in place barriers or improving the position for applicants.

1. No
2. Not applicable
3. Not applicable

### **Age**

Is there any potential impact on this group? Yes

*Please explain your answer:*

This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic but it may be beneficial for the children at the centre of such disputes if civil litigation, with its potential for increasing tensions between parents or others seeking contact with the child, can be avoided or minimised. Reference is made to the information set out against Sex (gender) above.

1. No
2. Not applicable
3. Not applicable

### **Marriage and civil partnership**

Is there any potential impact on this group? No

*Please explain your answer:*

No. This policy shows no indication of positively or negatively affecting applicants for civil legal aid under this protective characteristic. The approach to be taken to the assessment of applications is not one that can be viewed as either putting in place barriers or improving the position for applicants.

1. No
2. Not applicable
3. Not applicable

**Sexual orientation**

Is there any potential impact on this group? No  
*Please explain your answer:*

No. This policy shows no indication of positively or negatively affecting applicants for civil legal aid under this protective characteristic. The approach to be taken to the assessment of applications is not one that can be viewed as either putting in place barriers or improving the position for applicants.

1. No
2. Not applicable
3. Not applicable

**Where there is potential for indirect/ direct discrimination, what can you do to reduce or eliminate this risk?**

The revised guidance on the approach taken to the assessment of applications for civil legal aid to either pursue or defend an action of contact will be subject to monitoring once it has been in place for a number of months - initially after six months. Reports are already given to the LSPC on the outcomes achieved in cases where civil legal aid has been made available for contact proceedings. Once the revised guidance is in place then reports on outcomes will also take into account the applications process that had to be followed before legal aid was made available. This will allow us to assess whether the revised guidance is operating effectively in granting legal aid where court proceedings are likely to achieve some form of practical benefit for applicants.

We will obtain information on the number of applications for civil legal aid submitted together with information on the grant and refusal rate looking at the impact, if any, of the guidance on any of the protected characteristic groups and potentially most specifically as it impacts on Sex (gender).

We will continue to discuss issues raised in relation to the approach taken to the assessment of contact applications with interested bodies such as the Family Law Association and the Law Society of Scotland through routine meetings with these organisations and the regular meetings with the Civil Legal Aid Negotiating Team of the Law Society. In addition we will request feedback from organisations such as Families Need Fathers and Scottish Women's Aid once the revised guidance has been in place for one year

Finally before we implement the revised guidance we will notify all the bodies who provided comments on the proposed new guidance to allow them an appropriate period of time to put in place any necessary steps to undertake more negotiation before determining if it will still be necessary to seek civil legal aid all with the aim of improving the arrangements for pre-litigation negotiation.

**Do you need to make changes to your policy or function on the basis of this assessment?**

No

**What is the likely impact of these changes on the plans for the policy/ function? (resources, cost, timings etc.)**

Not applicable

### **Step 3 - Consultation and stakeholder engagement**

**Do you/did you have any consultation/ involvement planned for the policy/ function?**

Yes

**What do you hope to achieve from your consultation/ involvement?**

The consultation intended to identify any concerns or priorities there may be in relation to the implementation of the revised policy. SLAB has considered the evidence it holds in relation to application processes and decisions reached and contrasts us with the comments of stakeholders. The feedback from representative groups, Families need Fathers and Scottish Women's Aid, was generally supportive of proposals for change and they could see significant benefits in implementing this policy across all applications for civil legal aid for contact proceedings.

**List the main stakeholder agencies that you intend to or have already discussed this policy with. Give details of any equality groups represented.**

We consulted and received specific responses from:

- Law Society of Scotland Civil Legal Aid Negotiating Team
- Family Law Scotland
- Sheriffs' Association
- Families need Fathers
- Scottish Women's Aid.

#### **Step 4 - Discuss and review the assessment with decision makers and governance structures**

You **must** discuss the results with senior decision makers before you finalise the assessment.

**Give details of the governance structures you will report, or have already reported, to about this assessment.** For example, but not limited to, the Project Board, Executive Team or Board members.

The Executive Team - 23 July 2015

LSPC - 27 July 2015

**If you have presented the results of the assessment to the groups you have listed above please include the date you presented to each group listed.**

A full assessment must be signed off by the Executive Team so list them here along with the date, when known, that they will be asked to provide final comment.

Executive Team 3 September 2015 for final comment.

**Will there be any changes made to the plans for the policy/ function or actions as a result of this assessment?**

No.

However specific monitoring of applications by Sex (gender) will take place and be acted upon if necessary.

**If yes, give details of likely changes and actions arising from this assessment.**

Not applicable

## **Step 5 - Publication and review of EQIA**

All assessments must be published as early as possible after the decision is made to implement a new policy or function.

### **Date of publication:**

2015

### **Review date:**

This work has been superseded by GALA. The reasonableness policy statement will be published [here](#) in due course. This policy will be scheduled for review post 2023. At the point of review we will consider an equalities impact assessment.