EQUALITY IMPACT ASSESSMENT (EqIA)

Summary results of the EqIA

Title of policy/practice/process/service:

Advice and Assistance (A&A): advice on same matter (criminal matters).

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):

The key finding is that the current policy does not explicitly take equalities issues into account, but also that there do not appear to be any equality implications in relation to the current policy position. The factors involved in our policy appear to be neutral from an equalities perspective. We note there is a lack of evidence available in this area and would wish to gather further evidence, including via consultation, to increase confidence in our assessment.

Summary of actions taken because of this assessment:

Further evidence to be extracted and analysed internally. Views to be sought externally on any potential equalities implications we may be unaware of.

Ongoing actions beyond implementation include:

N/A.

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

Policy and Research Analyst, in conjunction with Head of Criminal Legal Assistance and key team members.

Senior responsible owner 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):
25/06/2024

Document control		
Document control:		Advice and Assistance (A&A): advice on same matter (criminal matters) v0.3
Date policy live from:		Live
Review cycle:		Every three years
Document change log		
Version/Author	**Date**	**Comment**
V0.1	October 2022	First draft
V0.2	February 2024	Section 3 updated following consultation
V0.3	April 2024	Updated draft as considered by GALA Review Group

Step 1 – Framing the planned change

Discussing step 1 and step 2 with the Policy Officer (Equalities) at an early stage will help identify appropriate evidence. This may include support from the wider Policy and Development team.

1.1 Briefly describe the aims, objectives and purpose of the policy/practice/process/service. *You can use the information in your project specification, business case etc.*

SLAB's policy on distinct matters in criminal A&A operationalises the requirements of the relevant Regulation, that is Regulations 13(1), (2), (6) and (7) of the Advice and Assistance (Scotland) Regulations 1996. The purpose of a policy statement is to identify a test to be undertaken by decision-makers: in this case, whether we will grant prior approval for advice to be given on the same matter generally, as well as how we specifically approach the advice on the same matter being given by the same solicitor. Section D of the policy statement is set out below, for reference.

"Advice on same matter: second (or subsequent) solicitor

In order for our approval for advice to be given on the same matter by more than one solicitor, the solicitor making the application must firstly confirm that they are willing to act for the client: our policy is that the second solicitor's submitting of a grant of A&A itself provides this confirmation.[1] We will advise the first solicitor that they should do no more work on the matter.

In determining whether or not to grant prior approval for advice to be given on the same matter, our policy is that we consider the facts and circumstances of the request and grant our approval where we consider it reasonable to do so.

Our policy is that it will only be reasonable for advice to be provided on the same matter where it is shown there is a good reason for the applicant having changed solicitor in the case. This would be where:

- a conflict of interest has arisen, such that the initial solicitor is no longer able to act; or
- there has been a justifiable breakdown in the relationship between the client and the first solicitor; or

[1] Note: a second solicitor involved in the giving of advice on the same matter is the only context in which a fresh grant of criminal A&A is required. Considering our policy on distinct matters there are no circumstances in which a single solicitor providing criminal A&A on the same matter would be required to submit a fresh grant of A&A for an existing case.

- the client has moved to another part of the country such that it is no longer reasonable to expect the client to remain with the first solicitor; or
- we are otherwise persuaded that there is a good reason for the applicant having changed solicitor in the case.

Advice on same matter: same solicitor

Where the advice is being provided by the same solicitor, the test we apply is also one of reasonableness. Our policy is that we will grant a request as reasonable where we are persuaded that the circumstances surrounding the matter have changed, such that any further advice will be new or different advice (albeit on the same matter).

Conditions

Notwithstanding our discretion to do so, as a matter of policy, we do not apply conditions to grants of prior approval to provide advice on the same matter.

Where our prior approval has not been sought, there is no ability for us to grant an application to give advice on the same matter retrospectively."

1.2 Why is the change required? *Legislative, routine review etc.*

No change: this is a routine review of policy.

1.3 Who is affected by this policy/practice/process/service? *Be clear about who the 'customer' is.*

The customer is the client to whom legal services (in this case, on the same matter) which are supported through the Legal Aid Fund, are provided. Whilst solicitors work with the policies and guidance we develop, they will not be affected in relation to their protected characteristic.

1.4 Policy/practice/process/service implementation date? *Project end date, date new legislation will take effect.*

Policy is currently in effect.

1.5 What other SLAB policies or projects may be linked to or affected by changes to this policy/practice/process/service?
The EqIA for related policies might help you understand potential impacts, and/or your findings might be relevant to share.

The main related operational policies are those with regards to increases in a valid grant of advice and assistance, distinct matters, and changes in nominated solicitor.

Step 2: Consider the available evidence and data relevant to your policy/practice/process/service

The information you gather in this section will:

- *help you to understand the importance of your policy/practice/process/service for different equality groups,*
- *inform the depth of equality impact assessment you need to do (this should be proportional to the potential impact on equality groups), and*
- *provide justification and an audit trail behind your decisions, including where it is agreed an equality impact assessment is not required.*

2.1 What information is available about the experience of each equality group in relation to this policy/practice/process/service?
Stay focused on the topic and scope of your policy/practice/process/service. Does the policy/practice/process/service relate to an area where there are already known inequalities? Refer to the EqIA guidance for sources of evidence. Remember, this step in the EqIA process is NOT about the impact your policy has on equality groups and what we need to do to mitigate those. That assessment is done under Step 4.
Note: If you proceed to a full EqIA you should continue to add to this section as you develop the policy/practice/process/service, come across new evidence and/or undertake a consultation.

Equality characteristics	Evidence source (web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/practice/process/service? *Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).*
Cross-cutting considerations	The profile of applicants to the Legal Aid Fund is patterned by protected characteristics within different aid types and by case categories within those aid types. However, we have no control over who applies to the Fund, which operates on eligibility rather than entitlement basis. Solicitors are the key intermediaries who decide which clients and which cases they take on. The aggregate position of who applies is the result of complex interactions between societal trends, changes in wider justice sector processes, individual firms' appetite to undertake legally aided work for a particular case or client, and the actual legal issue at play. There is little specific evidence we have been able to find (or extract from our internal data) which would tell us about the experiences of different protected characteristic groups with regards to, for example, numbers of occasions on which advice is sought on the same matter, how often permission is granted/refused, and by whom, which makes a full assessment challenging. Whilst there may be external evidence and research concerning how people may experience clustering of related legal issues, for example concerning patterns of offending and reoffending or how often people change solicitor, these are not directly relevant to the narrower question of advice-seeking on the same legal matter (particularly in relation to the kind of advice sought via A&A). For instance, whilst there is data available on reoffending rates – including by demographics – this may not relate strictly to needing advice specifically on the same matter (rather than advice on a further, but different offence).	
Age		No evidence found
Disability		No evidence found
Race		No evidence found
Sex		No evidence found

Equality characteristics	Evidence source (web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/practice/process/service? *Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).*
Gender Reassignment		No evidence found
Sexual orientation		No evidence found
Religion or Belief		No evidence found
Pregnancy or maternity		No evidence found
Marriage/civil partnership		No evidence found
Care Experienced *(corporate parenting duty)*		No evidence found

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

This policy will not affect every applicant for A&A, as not all applicants will seek advice on the same matter. However, it does form an in/out point where the advice is to be provided by a second solicitor, as if we do not provide approval, the grant will not be valid, and as such, the potential outcomes of this policy will be important for those applicants subject to it.

We are not currently aware of any internal or external evidence suggesting that applicants from particular protected characteristic backgrounds are more or less likely to seek criminal advice on the same matter, the prevalence of different reasons why they may do so (including whether protected characteristics have any bearing on this) and whether we are more or less likely to provide our approval in different circumstances. We will seek to produce and analyse relevant internal data in

future and may also seek to undertake consultation on this area which would assist in gathering relevant information on the experience of different groups in relation to this policy.

In terms of our general policy on advice on the same matter, our policy focuses on whether there has been a change in circumstances, for example the applicant relocating to a different part of the country, or a breakdown in the relationship between the applicant and their initial solicitor. We are not aware of any evidence which suggests these factors are likely to have differential equalities impacts. Where advice on the same matter is to be given by the same solicitor, the policy involves consideration of whether additional advice will be new/different in nature. Our assessment is that this factor is also likely to be neutral in terms of impacts on different groups: the focus here will be on the circumstances and legal features of the case and the advice being given.

2.3 Outcome of step 2 and next steps. Complete the table below to inform the next stage of the EqIA process.
Consult with the project group and/or Corporate Policy Officer (Equalities) on completing this section.

Outcome of Step 2 following initial evidence gathering and relevance to equality characteristics	**Yes/ No (Y or N)**	**Next steps**
There is no relevance to equality or our corporate parenting duties	N	Proceed to Step 5: agree with decision makers that no EqIA is required based on current evidence
There is relevance to some or all the equality groups and/or our corporate parenting duties	N	Proceed to Step 3: complete full EqIA
It is unclear if there is relevance to some or all the equality groups and/or our corporate parenting duties	**Y**	Proceed to Step 3: complete full EqIA

Step 3 – stakeholder involvement and consultation

This step will help you to address any gaps in evidence identified in Step 2. Speaking to people who will be affected by your policy/practice/process/service can help clarify the impact it will have on different equality groups.
Remember that sufficient evidence is required for you to show 'due regard' to the likely or actual impact of your policy/practice/process/service on equality groups. An inadequate analysis in an assessment may mean failure to meet the general duty.
The Policy and Development team can help to identify appropriate ways to engage with external groups or to undertake research to fill evidence gaps.

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

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

We published a consultation covering this policy area on our website, with responses open to all. A link to the consultation was also provided to all solicitors registered to provide legal aid as part of a broader mailshot to the profession.

3.3 What did you learn from the consultation/involvement? *Remember to record relevant actions in the assessment action log.*

In autumn 2023, we undertook a public consultation concerning our policies on A&A and ABWOR. This included a specific question regarding the equalities implications of our policies. The consultation documents were publicly available on SLAB's website. The consultation received three responses, all of which came from solicitor firms. We note that whilst this particular policy fell within the scope of that consultation, none of the comments received were directly relevant to this policy area; as such, our assessment for the purposes of this EqIA has not changed following the consultation exercise.

Step 4 - Impact on equality groups and steps to address these

You must consider the three aims of the general duty for each protected characteristic. The following questions will help:

- **Is there potential for discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010?** *How will this be mitigated?*
- **Is there potential to advance equality of opportunity between people who share a characteristic and those who do not?** *How can this be achieved?*
- **Is there potential for developing good relations between people who share a relevant protected characteristic and those who do not?** *How can this be achieved?*

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

In the tables below, record the impact the policy/practice/process/service might have on each equality characteristic, as it is planned or as it operates, and describe what changes in policy/practice process/service or actions will be required to mitigate that impact. Copy any actions across to the project action log.

Cross-cutting: all protected characteristics	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	We acknowledge that at a societal level, some protected characteristic groups may be more or less likely to apply for A&A and could perhaps be more or less likely to seek advice on the same matter. However, we have no control over this and in individual cases, this societal fact has no bearing on our decision-making in relation to how we approach the test at hand. As such, we do not believe there is any potential for discrimination here. Our approach to requests for advice on the same matter focuses on several factors, including changes to broad circumstances (for example, applicant location) as well as on the nature of the advice to be given.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

				Given the breadth of our discretion here, we could consider alternative or additional factors, including specifically around equalities. However, it is unclear to us that this would have had any equalities implications (positive or negative). Whilst the policy focus here does not specifically consider equalities, our view is that it nonetheless appears to be equalities neutral, with no obvious change which would be preferable from an equalities perspective.

Age	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	None.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Sex	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	None.

potential for developing good relations			X	
potential to advance equality of opportunity			X	As per the cross-cutting evidence table, above.

Disability	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	None.
potential for developing good relations			X	
potential to advance equality of opportunity			X	As per the cross-cutting evidence table, above.

Gender reassignment	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	The limited evidence for this protected characteristic does not highlight any potential differential impacts with regards to how this policy would be experienced.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Race	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	None.
potential for developing good relations			X	
potential to advance equality of opportunity			X	As per the cross-cutting evidence table, above.

Religion or Belief	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	None.
potential for developing good relations			X	
potential to advance equality of opportunity			X	As per the cross-cutting evidence table, above.

Sexual Orientation	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	

potential for discrimination			X	The limited evidence for this protected characteristic does not highlight any impact with regards to how this policy would be experienced.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Pregnancy & Maternity	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	The limited evidence for this protected characteristic does not highlight any impact with regards to how this policy would be experienced.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Marriage & Civil Partnership	**Place 'X' in the relevant box(es)**			**Describe the changes or actions (if any) you plan to take.** For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	**Negative impacts**	**No impact**	
potential for discrimination			X	Not relevant to be considered for this policy.
potential for developing good relations			X	

potential to advance equality of opportunity			X	

Care experienced young people	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. For example, to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	As per the cross-cutting evidence table, above.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

4.2 Describe how the assessment so far might affect other areas of this policy/practice/process/service and/or project timeline?

The assessment so far indicates that an important consideration may be ensuring that guidance for decision-makers and solicitors is clear that an applicant's protected characteristics should not need to be considered for the purposes of our decisions in this area. This will be considered further at Decision-Makers Guidance drafting stage.

4.3 Having considered the potential or actual impacts of your policy/practice/process/service on equality groups, you should now record the outcome of this assessment below.
Choose from one of the following (mark with an X or delete as appropriate):

Please select (X)	Implications for the policy/practice/process/service
X	**No major change**

	Your assessment demonstrates that the policy/practice/process/service is robust. The evidence shows no potential for unlawful discrimination and that you have taken all opportunities to advance equality of opportunity and foster good relations, subject to continuing monitoring and review.

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

You must discuss the findings of this assessment with senior decision makers during the lifetime of the project/review and before you finalise the assessment. Relevant groups include, but are not limited to, a Project Board, Executive Team or Board members. EqIA should be on every project board agenda therefore only note dates where key decisions have been made (for example draft EqIA sign off, discussion about consultation response).

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 key staff involved in making these decisions indicated that there is limited data available in relation to this decision set, and that whilst there are technically two key elements here:
1. our general policy on advice on same matter, and
2. our policy on advice on the same matter *by the same solicitor*,
in practice, our policy position is the same on both.

For both, the key question was seen to be whether the additional advice would be new or different, which would tend to be a legal question rather than one relating to the applicant's protected characteristics. No specific concerns were raised about the operation of this policy with regards equalities, notwithstanding the current lack of data.

Step 6 - Post-implementation actions and monitoring impact

There may be further actions or changes planned after the policy/practice/process/service is implemented and this assessment is signed off. It is important to continue to monitor the impact of your policy/practice/process/service on equality groups to ensure that your actual or likely impacts are those you recorded. This will also highlight any unforeseen impacts.

6.1 Record any ongoing actions below.

This can be copied from the project action log or elsewhere in this assessment and should include timescales and person/team responsible. If there are no outstanding items please make this clear.

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. *In the table below you should:*

- *list the relevant measures,*
- *identify who or which team is responsible for implementing or monitoring any changes,*
- *identify where the measure will be reported to ensure any issues can be acted on as appropriate.*

Measure	Lead department/ individual	Reporting (where/ frequency)
Internal data Analysis showing number of applicants who seek advice on the same matter by PC and subject matters.	**AMI (data extraction) with Policy (analysis)** Suggest this should be explored as part of business impact assessment regarding recording, and options for gathering this information in a manageable way	Head of Criminal Legal Assistance (yearly).

6.3 EqIA review date.

This EqIA should be reviewed as part of the post-implementation review of the policy/practice/process/service. The date should not exceed three years from the policy/practice/process/service implementation date.

04/04/2026.

Step 7 – Assessment sign off and approval

Once final consultation has been undertaken with Corporate Policy Officer (Equalities), all equality impact assessments must be signed off by the relevant Director or Senior Responsible Owner (SRO), even where an EqIA is not required. The Chief Executive must approve all equality impact assessments. Note the relevant dates here:

Director/SRO sign off: 04/04/2023.
Chief Executive approval: 04/04/2023.

All full equality impact assessments must be published on SLAB's website as early as possible after the decision is made to implement the policy, practice, process or service.