EQUALITY IMPACT ASSESSMENT (EqIA)

Summary results of the EqIA

Title of policy/practice/process/service:

Advice and Assistance (A&A): notification of A&A grant by solicitor to SLAB.

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 current policy does not explicitly take equalities issues into account. Also, 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.

Summary of actions taken because of this assessment:

Further evidence to be extracted and analysed internally, with 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, Head of Civil and Children's 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): notification of A&A grant by solicitor to SLAB v0.5
Date policy live from:		Live
Review cycle:		Every three years
Document change log		
Version/Author	**Date**	**Comment**
V0.1	May 2023	Initial draft
V0.2	November 2023	Further draft post-GALA Review Group input regarding impact on solicitors
V0.3	November 2023	Draft cleaned after further Policy input
V0.4	February 2024	Section 3 updated following consultation
V0.5	April 2024	Finalised clean version

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 notification by the solicitor in the context of A&A operationalises the requirements of the relevant Regulation, that is Regulation 11 of the Advice and Assistance (Scotland) Regulations 1996. In particular, the purpose of the policy statement is to set out how we approach the 'special reason' test. The relevant part of the policy statement is set out below for context.

"Our policy is that in considering whether the 'special reason' test has been met, we must be satisfied that the particular circumstances described by the solicitor in explaining why the notification was not submitted timeously amount to more than simply plain oversight or ignorance of the Regulations.

Where we are not satisfied of this, in line with Regulation 11, the application will be rejected."

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 ultimate customer is the client to whom legal services, supported through the Legal Aid Fund, are provided. With regards to this particular policy, solicitors may also be affected with regards to their protected characteristics.

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 policy is that on valid grant of advice and assistance.

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 case categories within those aid types. 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 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. We are not aware of any specific evidence that would suggest solicitors from different protected characteristic backgrounds would be more or less likely to notify us of their grant of A&A in a timely fashion. There is also no specific evidence we have been able to find which tells us about the experiences of different protected characteristic groups with regards to, for example the numbers of occasions on which an application is rejected because the special reason test has not been satisfied.
Age		No evidence found.
Disability	(1) ADHD and Deadlines, The Mini-ADHD Coach	Evidence suggests that people with conditions like ADHD may find it more difficult to meet deadlines: ADHD can make it difficult to manage a schedule given it can mean a person's perception of time is altered. Moreover, they may be "paralyzed by fear" of meeting a deadline. (1)

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).*
	(2) How does mental health affect office productivity?, Health Shield (3) Profile of the Profession, 2018-19, Law Society of Scotland	We are not aware of any specific evidence as to the prevalence of these types of conditions within the Scottish solicitor cohort. Evidence also indicates that people experiencing poor mental health may struggle to carry out work-related activities such as meeting task deadlines. (2) The Law Society of Scotland's profession profile showed that of the 5% of respondents who indicated they had a disability, 13% described this as "stress or anxiety". (3) (Note: these figures are not restricted to solicitors involved in the provision of legal aid).
Race		No evidence found.
Sex		No evidence found.
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.

In every case, the solicitor is required to notify us of an application of A&A having been made within 14 days. However, with regards to the 'special reason' test specifically, this policy will only affect those applicants for whom the solicitor submitted notification of the application outwith the 14-day period. However, it does form an in/out point, as where we are not satisfied that the 'special reason' test has been satisfied, 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 evidence (internal or external) suggesting that applicants from particular equality groups are more or less likely to be involved in cases where notification is made to SLAB outwith the 14-day period. Regardless, there is no obvious reason the late notification of an application for A&A would ever relate to an applicant's protected characteristics, rather than circumstances faced by the nominated solicitor or their firm.

There is some evidence, set out above, that solicitors from different equality groups (particularly with regards to disability) may be more likely to face difficulties in submitting information in a way that meets specific deadlines, however.

The factors we consider as part of the 'special reason' test are broadly framed. They do not explicitly mention equalities considerations. The only factors we explicitly state as reasons for rejection, that is, ignorance of the Regulations or simply forgetting to notify us, do not involve consideration of equalities, and our assessment is that these will not have a greater of lesser impact on any protected characteristic groups.

However, in principle, if a solicitor could show that relevant circumstances relating to their protected characteristics had prevented them from notifying us of a grant of A&A in a timely way, that information would be considered as part of this policy.

By framing the policy in this broad way, we can allow for more time to be taken in this kind of scenario.

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 of 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 of 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 PCs	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	There is no evidence that this policy position is discriminatory with regards to any of the protected characteristics.
potential for developing good relations			X	There is no evidence that this policy position has any impact with regards to the potential to develop good relations.
potential to advance equality of opportunity	X			The policy position with regards to the special reason test is very broadly framed. If a solicitor could show that there are relevant circumstances relating to any of their protected characteristics that would be considered as potentially providing a special reason for late notification. Our view is that this may assist in advancing equality of opportunity, as it means a solicitor (and ultimately their client) would not be deprived – in this case, by the grant being invalidated – due to circumstances connected to their protected characteristics, which other solicitors not sharing the protected characteristics would not experience.

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

No impact anticipated at this point, aside from the normal process of developing guidance for our decision-makers and external guidance for solicitors.

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.

The equalities implications of this policy position were discussed with key operational staff, including the Head of Civil and Children's Legal Assistance and the Manager of Criminal Legal Assistance. The draft EqIA was also circulated for comments.

The EqIA was initially discussed at the GALA Review Group on 1 August 2023, when it was suggested that solicitors' protected characteristics could be considered. A further draft of the EqIA was then considered and agreed at the November meeting of the GALA Review Group.

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 rejected A&A applications on the grounds that the 'special reason' test has not been satisfied, broken down by protected characteristics of applicant and aid type, as well as by solicitor protected characteristics, as far as available.	**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 Civil & Children's Legal Assistance and 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.

07/11/2026.

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: 07/11/2023.
Chief Executive approval: 07/11/2023.

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.