



EQUALITY IMPACT ASSESSMENT (EqIA)

Summary results of the EqIA

Title of policy/practice/process/service:

Civil ABWOR merits tests

Note: this EqIA covers our policies on the ABWOR merits tests provided for by both Regulation 3(m) and similar proceedings (such as employment tribunals), and Regulation 3(w) proceedings (that is, those subject to an interest of justice test).

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 equalities considerations are embedded into our policy on this ABWOR merits test. The assessment indicates that the factors involved in our decision-making are either neutral in their impact; enable consideration of equalities to be used as a balancing factor where refusal would otherwise be likely; or may be positive from an equalities perspective by enabling circumstances associated with an applicant's protected characteristics to be considered.

Summary of actions taken because of this assessment:

We should be clear in our decision-making and external guidance that we will take equalities considerations into account and provide guidance as to the kinds of information which will assist in enabling us to make decisions where equalities issues are relevant to our policy position. We will monitor how the policy works in practice through ongoing review of decisions.

Ongoing actions beyond implementation include:

Not yet relevant.

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

Policy and Research Analyst, in conjunction with the Head of Civil and Children's Legal Assistance.

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):

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V0.1	September 2022	First draft as considered by GALA Review Group
V0.2	February 2024	Section 3 updated following consultation
V0.3	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 the civil ABWOR merits tests operationalises the requirements of the relevant Regulation, that is Regulations 13(1) and (2) of the Advice and Assistance (ABWOR) (Scotland) Regulations 2003. The purpose of a policy statement is to identify a test to be undertaken by decision-makers: in this case, whether the three tests set out by Regulation 13(2) have been met. Section D of the policy statement for employment tribunal proceedings is set out below, for reference.

Note: given the very strong similarity between the policies, our view is that this impact assessment is also relevant to our policy on the ABWOR proceedings in relation to Regulation 3(w).

“Our policy on how we approach the tests set out by 13(2) and (3) - for the proceedings at 3(m), (s) and 5A(d) - is set out below.

Arguable

Our policy on whether the ‘arguable’ test is met is that this is a low bar, similar to the ‘probable cause’ test applied to applications for civil legal aid.

A request to provide ABWOR for these types of proceedings will satisfy the ‘arguable’ test where the application makes out a competent and relevant case which the applicant should be able to establish to the standard the tribunal would require for a case of that type.

An applicant will be required to set out in the application the relevant legal test and the facts that support the application of that test in their favour in the case.

Our definition of ‘arguable’ does not change according to the type of proceedings - that is, we mean the same thing in both the context of proceedings in the context of 3(m), 3(s) and 5A(d).

Reasonable

Our policy is that factors which would make it unreasonable to make public funding available and thus lead to a refusal to approve the provision of ABWOR are any of the following:

- if the potential impact for the applicant (should their case succeed) is minimal or disproportionate to the cost, unless that is balanced by a wider impact on others, development of case law, or the promotion of equality of opportunity for people with shared protected characteristics.
- If the prospects of success in the case are poor, taking into account the available evidence, the evidentiary burden associated with the case and the applicant's status in that case, unless that is balanced by a wider impact on others, development of case law, or the promotion of equality of opportunity for people with shared protected characteristics;
- If the prospects of recovery following a successful pecuniary claim are poor, unless that is balanced by a wider impact on others, development of case law, or the promotion of equality of opportunity for people with shared protected characteristics;
- If there are no considerations of equality of arms - i.e. the opponent is unrepresented and there are no other factors in support of legal representation being provided.

Case is too complex to allow the applicant to present it to a minimum standard of effectiveness in person

In considering the factor above (and the two statutory sub-factors), our policy is that we will consider whether the case appears so ordinary or straightforward that your client could understand it and put forward his/her own views without the assistance of legal representation.

For the proceedings dealt with by this policy statement, we will take into account the specific legal features of the case, as well as any relevant wider context around the applicant's circumstances and abilities. We are likely to be satisfied that the case is 'too complex' where any of the following features arise in the case:

Features of the case

- If there is any question as to the relevant law which is to be applied or the case includes aspects of new or emerging law;
- If the relevant procedure, law or evidence are sufficiently complicated as to merit the involvement of a solicitor;
- The forum the case is to be held in (for instance, whether the case is before the Upper Tribunal).

Wider features (including client circumstances)

- If there are reasons relating to a protected characteristic, why the client may be unable to understand the proceedings or state their own case;
 - For instance, if they were very young/elderly, or had a mental or physical disability bearing on their ability to participate effectively
- If there are other aspects of the applicant’s circumstances which would make presenting their case particularly challenging;
 - For instance, issues with drugs or alcohol with a bearing on the client’s ability to participate effectively;
 - Or where the client cannot read or has limited literacy skills.

We will also take the following specific factor into account when considering complexity:

- If part of the applicant’s case is an allegation of discrimination;

Tribunal deciding will sit in Scotland:

For the types of proceedings specified under Regulation 5A(d), this is a further statutory factor that must be satisfied. Our policy here is that for a tribunal to be considered as ‘sitting in Scotland’, the matter must be within the normal jurisdiction of a Scottish tribunal which is hearing the case, in which the applicant’s remedy would automatically lie.”

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, which are supported through the Legal Aid Fund, are provided. The extent to which assisted persons can access ABWOR (for those cases requiring our prior authority) will be affected by how we set policy in this area.

Solicitors and advocates work with the policies and guidance we develop. They are affected by the policy but not in relation 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 EqlA 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 authorised expenditure (A&A/ABWOR), and more generally, our policies around whether a grant of A&A/ABWOR can be considered valid.

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 EqlA guidance for sources of evidence.

Remember, this step in the EqlA 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 EqlA 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? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>																							
Cross-cutting evidence	<p>We acknowledge that much of the evidence in this table currently relates to employment tribunal proceedings only, whilst the policies in question cover a much broader range of proceedings. At this stage, we have been unable to specifically find broader data which would tell us about the experiences of different protected characteristic groups specifically in relation to other relevant tribunals. With regards employment tribunals, it should be noted that a claim of discrimination can be brought in relation to nearly all the protected characteristics (though claims are more common in relation to some than others). This is relevant as our policy specifically recognises that these cases are particularly complex.</p> <p>The profile of applicants to the Legal Aid Fund is patterned by protected characteristics within different aid types (for example, between civil and criminal ABWOR) and by case categories within those aid types (for example, between employment tribunals and pension regulator cases). 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 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.</p>																								
Age	<p>(1) SLAB Applications data, 21-22 (internal)</p> <p>(2) 2020 HMCTS Employment Tribunals statistics</p> <p>(3) Department of Business, Energy</p>	<table border="1"> <thead> <tr> <th>Distribution by age</th> <th>BENA</th> <th>ET</th> </tr> </thead> <tbody> <tr> <td>>=24</td> <td>8%</td> <td>3%</td> </tr> <tr> <td>25-34</td> <td>8%</td> <td>14%</td> </tr> <tr> <td>35-44</td> <td>17%</td> <td>37%</td> </tr> <tr> <td>45-54</td> <td>42%</td> <td>31%</td> </tr> <tr> <td>55-64</td> <td>25%</td> <td>11%</td> </tr> <tr> <td>65+</td> <td>0%</td> <td>3%</td> </tr> </tbody> </table>	Distribution by age	BENA	ET	>=24	8%	3%	25-34	8%	14%	35-44	17%	37%	45-54	42%	31%	55-64	25%	11%	65+	0%	3%	<p>The table above shows the age distributions for the two main categories of civil ABWOR for which SLAB's prior approval is required: Benefit appeals or reviews (BENA) and</p>	
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	<p>and Industrial Strategy: Employment Tribunal Applications 2018 Survey</p> <p>(4) Pleasance et al, ‘How people understand and interact with the law’, 2015</p> <p>(5) Attention and ageing</p>	<p>Employment Tribunals (ET). The distribution for employment tribunal proceedings leans slightly towards younger age groups. The numbers of applications are too small to allow analysis of refusal rate by age. (1)</p> <p>In June 2020, 1% (n12) of complaints to the Employment Tribunal in Scotland concerned discrimination on the grounds of age. (2)</p> <p>A survey of Employment Tribunal claimants found that “In comparison with the workforce as a whole, employment tribunal claimants had an older age profile: they were more likely to be aged 45-64 (54 per cent of employment tribunal claimants compared with 38 per cent of all employees) and less likely to be aged under 25 (4 per cent compared with 13 per cent).” (3)</p> <p>A 2015 report on how people interact with the law based around the concept of ‘legal capability’, with regards to for example, knowledge of rights and legal empowerment, found that “there were significant differences in the percentages of respondents of different ages in the lower and higher capability groups... the higher capability group was disproportionately made up of 45 to 59 year olds, while the youngest (25 to 34 year olds and, particularly, 16 to 24 year olds) and oldest respondents (aged 75 or older) appeared more often in the lower capability group.” (4)</p> <p>As such, to some extent an applicant’s age may reflect their legal capability, which may in turn be relevant to their ability to participate in the proceedings. The ability to process complex tasks slows as we age. (5)</p> <p>This may be relevant to our policy as an applicant “may be unable to understand the proceedings or to state the applicant’s own case because of age”, in line with the regulatory factors.</p>

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? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>
Disability	<p>(1) 2020 HMCTS Employment Tribunals statistics</p> <p>(2) Department of Business, Energy and Industrial Strategy: Employment Tribunal Applications 2018 Survey</p> <p>(3) Byrom and Beardon/Legal Education Foundation, 2021, Understanding the Impact of COVID-19 on Tribunals</p> <p>(4) Pascal et al, ‘How people understand and</p>	<p>In June 2020, 2.4% (n.30) complaints to the Employment Tribunal in Scotland concerned disability discrimination. This makes it the protected characteristic against which discrimination complaints to the Employment Tribunal were most common. (1)</p> <p>A 2018 survey found that “More than a quarter of claimants (29 per cent) had a long-standing illness, disability or infirmity that limited their activities in some way, double the proportion of those in the employee population (13 per cent).” Moreover, “the proportion of claimants who had a long-term disability was highest in discrimination cases (53 per cent had a limiting illness, disability or infirmity).” The survey also found that “Claimants with a disability were less likely to be successful than those with no disability.” (2)</p> <p>A study on digital hearings and tribunals reported that “Whilst respondents considered that remote hearings had reduced psychological barriers to attending hearings for some, these barriers had been amplified for others: particularly those with low levels of digital literacy and confidence... parties experiencing mental health problems; and parties with hearing and learning difficulties.’ (3)</p> <p>In the context of disability, this could be relevant to this policy on how we consider whether the applicant is able to understand the proceedings.</p> <p>Pascal’s study on how people understand and interact with the law found that “41.6 per cent of low capability respondents reported a long-term illness or disability compared to 24.8 per cent of high capability respondents, while 36.4 per cent of low</p>

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? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>
	<p>interact with the law, 2015</p> <p>(5) Capital District Health Authority guidance; Anxiety: The Cognitive Perspective</p> <p>(6) SLAB equality outcomes research</p>	<p>capability respondents self-reported a stress-related illness compared to 21.4 per cent of high capability respondents.” (4)</p> <p>People experiencing mental health problems can find concentrating and remembering things difficult, as well as experience heightened stress levels, which may be an issue for participating in tribunal proceedings. Anxiety and stress can exacerbate problems with reading comprehension. (5)</p> <p>For people with experience of poor mental health, stress in formal situations was a common theme throughout the conversations. This could manifest itself in tension whilst waiting for a service or appointment, and in making it challenging to absorb and retain information. For some, the ability to retain information was a daily challenge due to the nature of their condition(s). (6)</p>
Race	<p>(1) HMCTS Employment Tribunals statistics ,2020</p> <p>(2) Department of Business, Energy and Industrial Strategy: Employment Tribunal</p>	<p>In June 2020, 0.8% (n.10) complaints to the Employment Tribunal in Scotland concerned race discrimination. (1)</p> <p>A survey of Employment Tribunal claimants in 2018 found that “three in four claimants (74 per cent) were white... This is also lower than the workforce in general (88 per cent). The proportion was much lower in discrimination cases, where only 67 per cent of claimants were white.” (2)</p> <p>A 2006 study of ethnicity in the context of tribunal proceedings concluded that “there were significant differences in the extent to which users from different ethnic backgrounds were able to participate in hearings. South Asian users and those from</p>

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? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>
	<p>Applications Survey 2018</p> <p>(3) Genn et al, Tribunals for Diverse Users, 2006</p> <p>(4) Bryon et al, Understanding the Impact of COVID-19 on Tribunals</p> <p>(5) Census results</p> <p>(6) SCILT: Languages in Scotland</p>	<p>other non-European ethnic groups were consistently judged to be less able to understand questions put to them than Black African/Caribbean users or White users, whether or not an interpreter was being used at the hearing” and that while “differences in ability do not correspond neatly with ethnic categories, the relationship between ethnicity and social exclusion suggests that lower levels of ability will be more common among certain Minority Ethnic groups.” (3)</p> <p>This may be relevant to our policy in terms of considering whether there are any reasons why the applicant may be unable to understand the proceedings or put across their views.</p> <p>A study in relation to digital hearings and tribunals found that “whilst respondents considered that remote hearings had reduced psychological barriers to attending hearings for some, these barriers had been amplified for others: particularly those with... English as an additional language.” (4)</p> <p>Again, in the context of race, given the intersection with language, this could be relevant to our considerations of whether the applicant is able to understand the proceedings.</p> <p>The main intersection between race and accounts assessment is in English language comprehension. The relevant results from the 2011 census are:</p> <ul style="list-style-type: none"> - “The proportion of the population aged 3 and over reported as not being able to speak English well or at all was 1.4% overall, and 11% for those born outside the UK. This proportion generally increased with age of arrival into the UK: for those who

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? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>									
		<p>arrived aged under 16 it was 5% while for those who arrived aged 65 and over it was 31%.”</p> <p>- “The proportion of Scotland’s population aged 3 and over who could speak, read and write English was 94%. This proportion was lowest for those born in the EU Accession countries (75%) or in the Middle East and Asia (89%).” (5)</p> <p>The most spoken languages in Scotland other than English are Polish, Urdu, Scots, Punjabi and Arabic. (6)</p>									
Sex	<p>(1) SLAB Applications data, 21-22 (internal)</p> <p>(2) 2020 HMCTS Employment Tribunals statistics</p> <p>(3) Department of Business, Energy and Industrial Strategy: Employment Tribunal Applications Survey 2018</p>	<p>Our applications data indicates that female applicants make up a greater share of benefits appeals cases (around two thirds of total applicants) and are slightly more likely to have ABWOR granted than male applicants. Male applicants make up a slightly greater share of employment tribunal cases (57% of the total), but the grant rate for men is slightly lower than for female applicants.</p> <table border="1" data-bbox="840 895 2018 1013"> <thead> <tr> <th></th> <th>Female grant rate</th> <th>Male grant rate</th> </tr> </thead> <tbody> <tr> <td>Benefit appeal cases</td> <td>63%</td> <td>50%</td> </tr> <tr> <td>Employment tribunal cases</td> <td>100%</td> <td>85%</td> </tr> </tbody> </table> <p>(1)</p> <p>In June 2020, 1.4% (n.17) complaints of sex discrimination were made to the Employment Tribunal in Scotland. (2)</p> <p>A 2018 survey of Employment Tribunal claimants found that “Over half of claimants were men (56 per cent) ... This is somewhat higher than the proportion of the employed workforce as a whole (51 per cent).” The same survey also found there was a difference in terms of the assistance claimants had, as well as in the types of claims</p>		Female grant rate	Male grant rate	Benefit appeal cases	63%	50%	Employment tribunal cases	100%	85%
	Female grant rate	Male grant rate									
Benefit appeal cases	63%	50%									
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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? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>
		being made: “Female claimants were more likely than male claimants to have had a day-to-day representative (62 per cent compared with 53 per cent) ... Female claimants were more likely to bring claims under the any discrimination jurisdiction than male claimants (32 per cent compared with 25 per cent). Claimants with discrimination cases were most likely to have a day-to-day representative (64 per cent).” (3)
Gender Reassignment		No evidence found.
Sexual orientation	<p>(1) 2020 HMCTS Employment Tribunals statistics</p> <p>(2) Department of Business, Energy and Industrial Strategy: Employment Tribunal Applications Survey 2018</p>	<p>In June 2020, 0.2% (n.2) complaints of discrimination on the grounds of sexual orientation were made to the Employment Tribunal in Scotland. (1)</p> <p>A 2018 survey of Employment Tribunal claimants found that “The majority of claimants identified themselves as heterosexual (92 per cent), while 2 per cent identified as gay/lesbian and 1 per cent as bisexual. A further 1 per cent answered that they did not know, and 4 per cent refused to answer.” (2)</p>
Religion or Belief	(1) 2020 HMCTS Employment Tribunals statistics	In June 2020, 0.1% (n.1) complaints of religion/belief discrimination were made to the employment tribunal in Scotland. This makes it the protected characteristic against which the fewest complaints were made at that point. (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? <i>Lack of evidence may suggest a gap in knowledge/need for consultation (step 3).</i>
	<p>(2) Department of Business, Energy and Industrial Strategy: Employment Tribunal Applications Survey 2018</p> <p>(3) Census results</p> <p>(4) SCILT: Languages in Scotland</p>	<p>A 2018 survey of ET claimants found that “Two thirds of claimants regarded themselves as belonging to a religion (66 per cent) [...] The majority of these (55 per cent of all claimants) regarded themselves as Christian. Overall, 10 per cent of all claimants regarded themselves as belonging to a religion other than Christianity, while 31 per cent of claimants reported that they do not belong to any religion. In the workforce as a whole, a greater proportion say they do not belong to any religion (41 per cent), while 51 per cent regard themselves as Christian and 8 per cent as belonging to another religion.” (2)</p> <p>The proportion of people in Scotland identifying a Muslim or ‘other’ religion overall is 3.6% but they make up 34.6% of people living in Scotland who were born outside the UK or EU27. Roman Catholics make up 13.6% of the population overall, but account for 39.6% of the population born in the EU27. (2)</p> <p>In line with the evidence source (3) and (4), English language proficiency is patterned by ethnicity and country of birth, as well as religion. Language proficiency may be relevant to our consideration of whether the applicant is able to understand the proceedings and put across their views.</p>
Pregnancy or maternity		No evidence found.
Marriage/civil partnership		No evidence found.
Care Experienced		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.

The policy forms a key part of the initial assessment of eligibility - it is an in/out point. Where the test is not met, no ABWOR can be provided. The grant rate for ABWOR in relation to employment tribunal proceedings was over 90%, whilst for benefit appeals, the grant rate was 58%. The number of applications for other categories are too low to consider.

The assessment of whether a case is arguable does not involve any consideration of the applicant's equality characteristics: this is a legal question relating to the nature of the case being put and whether it is relevant to the tests to be applied by the relevant tribunal.

The policy position on reasonableness also focuses primarily on the nature of the case, for example the prospects of success, but it also incorporates a balancing of key factors to reflect that it may still be reasonable to grant ABWOR where otherwise this may be refused, if this risk is balanced by the protection of human rights, wider impact on others, development of case law, or the promotion of equality of opportunity for people with shared protected characteristics. This means that protected characteristics may be considered here. It should be noted that in looking at outcomes of the policy at a later stage, we may wish to review outcomes again by subject matter and to understand the extent to which these balancing factors had effect.

Finally, the consideration of whether the case is too complex for the applicant to participate effectively, whilst obviously involving some consideration of the nature of the case and its complexities, clearly must also involve consideration of the specific applicant. Our view is that an applicant's protected characteristics may well be involved here: for instance, an applicant's disability could mean that they are less able to present the case themselves. This is explicitly recognised in the factors we set out in the policy statement.

The subject matter of some of these cases may also mean they are particularly important and relevant from the perspective of equalities, that is claims of discrimination in employment tribunal cases, and disability discrimination in schools. We also specifically take this into account in our policy, by recognising that these cases may be particularly complex and as such, this will be relevant to the 'complexity' test, and thus ultimately whether we will approve ABWOR.

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	Y	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	N	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 EqlA 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 make employment tribunal claims and to apply for ABWOR to do so. However, we have no control over this and in individual cases, this societal fact has no bearing on our decision-making with regards to that factor when considering the individual applicant at hand. As such, we do not believe there is any potential for discrimination here.
potential for developing good relations			X	
potential to advance equality of opportunity	X			<p>For ABWOR in relation to the employment tribunal, cases could potentially involve discrimination claims in relation to nearly all the protected characteristics. Our policy specifically recognises the complexity/importance of these cases and likelihood representation will be required where such a claim is made. With regards to determining the reasonableness of an application, the policy involves various factors such as prospects of success. Where we might otherwise be minded to refuse against such factors, our policy balances this against consideration of the potential of the case to promote equality of opportunity and advance human rights. If relevant information were to be provided to us, then again, this could be relevant to any of the protected characteristics. Our view is this may be positive in terms of equality of opportunity.</p> <p>Decision-makers' guidance and external guidance for solicitors will specify how this balancing/considering is approached, and what information to provide.</p>
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			As set out in table 2, there are various ways in which an applicant's age may be relevant to their ability to understand and participate in proceedings. We have included a specific factor which enables this to be considered. Decision-makers' guidance and external guidance for solicitors will specify what kinds of information may be relevant to addressing this factor, as well as how the balancing of the reasonableness factors is approached.

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	Evidence suggests women Employment Tribunal claimants may be more likely to make claims based on discrimination. This is not an area we have any control over. Our policy acknowledges that discrimination cases are complex, and we take this into account in our decision-making, but whether the applicant is male or female is not relevant to that decision.
potential for developing good relations			X	None.
potential to advance equality of opportunity			X	

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
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	Positive impacts	Negative impacts	No impact	justification to not make changes despite the potential for adverse impact.
potential for discrimination			X	None.
potential for developing good relations			X	
potential to advance equality of opportunity	X			As set out in table 2, there are various ways in which disability could have an impact on an applicant's ability to understand and participate in proceedings. We have included a specific factor which enables this to be considered. Decision-makers' guidance and external guidance for solicitors will specify how this balancing/considering is approached and what information to provide.

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
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	Positive impacts	Negative impacts	No impact	justification to not make changes despite the potential for adverse impact.
potential for discrimination			X	None.
potential for developing good relations			X	
potential to advance equality of opportunity	X			As set out in table 2, there are various ways in which race, particularly in the context of language ability, could have an impact on an applicant's ability to understand and participate in proceedings. We have included a specific factor which enables this to be considered. Decision-makers' guidance and external guidance for solicitors will specify how this balancing/considering is approached and what information to provide.

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			The evidence for this protected characteristic does not highlight any impact on how this policy may be experienced: impacts are due to the intersectionality with ethnicity, nationality and spoken language, as set out in table 2. We have included a specific factor which enables this to be considered.

				Decision-makers' guidance and external guidance for solicitors will specify how this balancing/considering is approached and what information to provide.
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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	The evidence for care experienced young people suggests that impacts on how these applicants experience these cases and this policy will flow from the intersectionality with mental health and age. Our policy incorporates a specific factor which would enable these to be considered, as well as the balancing aspects of how we approach reasonableness in this context.
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 and that we may take equalities issues into account, addressing the kinds of information we would expect to see in this regard. 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	<p>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.</p>

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. EqlA should be on every project board agenda therefore only note dates where key decisions have been made (for example draft EqlA 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.

Initial discussions with the Head of Civil Legal Assistance and other key staff involved in making these decisions (c. 27/6/22) indicated that a key part of the policy, in line with the regulatory factors, is consideration of whether the applicant is able to understand the case and put their views across. It was confirmed that in considering this, we do take an applicant’s protected characteristics into account where it is shown they have a bearing on ability to understand or otherwise participate. Discussions further highlighted that in considering reasonableness, we do incorporate a balancing exercise: that is, where it would otherwise be unreasonable to grant, we will consider whether there are equalities issues at stake which could persuade us to grant. It was later agreed this applies to each of the reasonableness factors, rather than some of them.

It was also specifically noted that one element of our policy includes looking at whether the case involves a claim of discrimination. The policy was then further discussed at the September meeting of the GALA Review Group, which includes a range of senior SLAB staff.

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 of numbers of requests, grants and refusals for ABWOR by assisted person protected characteristic - broken down by subject matter/case category, if possible, as well as refusal reasons, with regards different factors.	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 and Children's Legal Assistance (yearly).

6.3 EqlA review date.

This EqlA 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.

09/09/2025.

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 EqlA is not required. The Chief Executive must approve all equality impact assessments. Note the relevant dates here:

Director/SRO sign off: 09/09/2022.

Chief Executive approval: 09/09/2022.

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.