



Ministry
of Justice

Equality Statement

Government's interim response to the Criminal Legal Aid Independent Review consultation

Policy Summary

1. This Equality Statement has been written to be read alongside the government's interim response to the consultation on the Criminal Legal Aid Independent Review, to which this statement is an annex.
2. As outlined in the government's interim response to the consultation, the changes will add an estimated £115m p.a. on fees to ensure we pay more fairly for work undertaken by criminal defence practitioners. The changes affect the following areas:
 - Increasing what litigators and advocates are paid for criminal legal aid work by 15% for Police Station, magistrates' court (including youth court), Advocates Graduated Fees Scheme, Very High Cost Cases (litigators) and Expert Fees.
 - A 15% increase on litigator hourly rates and basic fees paid through the Litigators Graduated Fees Scheme.
 - Increased payment for litigators in relation to pre-charge engagement; and
 - In the case of Elected Either Way Guilty Plea Fixed Fee, abolish the fixed fees to increase the fees to those paid under the usual LGFS and AGFS.
3. This Equality Statement addresses the impact on people with particular protected characteristics in relation to the specific measures contained in the Statutory Instrument to be laid in Parliament in July 2022 and set to come into force on 30 September 2022 as set out in the government's interim response to the consultation. A full response to all the remaining proposals in the consultation (including the training grants proposal) will be published later in the year.

Equality Duty

4. Section 149 of the Equality Act 2010 ('the 2010 Act') requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act;
 - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
 - foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
5. Paying 'due regard' needs to be considered against the nine 'protected characteristics' under the 2010 Act – namely race, sex, disability, sexual orientation, religion and belief, age, gender reassignment, marriage and civil partnership (in respect of the first limb above) and pregnancy and maternity.

Methodology to determine discrimination potential

6. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the measures has been to identify the individuals whom the changes will impact (the 'pool'), and then draw comparisons between the potential impacts of the changes on those who share particular protected characteristics, with those who do not share those characteristics.
7. Guidance from the EHRC states that the pool to be considered at risk of potential indirect discrimination should be defined as those people who may be affected by the measures (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

8. As the changes apply to both crime lower work and crime higher work, the primary pool of individuals affected will be legal practitioners who deliver criminal legal aid services. Practitioners can broadly be categorised as:
 - Litigators (including solicitors, legal executives and accredited police station representatives); and
 - Advocates (including barristers and solicitor advocates).
9. In this statement, we also refer to legal aid 'providers'. This refers to the firms who hold legal aid contracts and self-employed criminal barristers.
10. We have also identified legal aid clients could be affected by all these changes. However, because of the limited number of clients affected, we don't have the data to reliably model the impact.
11. Crown Court defendants were identified as a group that could be particularly impacted by these measures financially, because a small number of Crown Court defendants who are required to contribute to the cost of their Crown Court

case may find that the cost of that contribution increases if fees are increased following consultation.

Data sources

12. We have identified the following as the most relevant data sources for assessing equality impacts:

For practitioners:

- Summary Information on Publicly Funded Criminal Legal Services, (the “Data Compendium”) (DC), published by MoJ in February 2021,¹
- Chattered Instituted of Legal Executives’ (CILEX) and CILEx Regulation’s joint submission to the Independent Review into Criminal Legal Aid, and;

For clients:

- LAA data on clients collected through provider billing information, 2021-22².

13. We have used data from the Data Compendium that shows the gender, ethnicity, sex and age of barristers and solicitors (including duty solicitors). We have drawn upon the Chattered Instituted of Legal Executives’ (CILEX) and CILEx Regulation’s joint submission to the Independent Review into Criminal Legal Aid to show gender, ethnicity and age of and CILEX members who are both educated in and working on criminal practice.

14. We currently do not have sufficiently reliable practitioner data on disability, and we do not have sufficiently reliable practitioner, provider or client data on sexual orientation, religion or belief, marriage and civil partnership (in respect of the first limb above), pregnancy and maternity or gender reassignment. The consultation responses did not provide specific data on this. Some consultation responses mentioned the impact of police station remote legal advice pilot on people with disabilities. Decisions on police station remote legal advice pilot is not part of the Government’s interim response and, therefore, not considered in this equality statement. A full response to all the remaining proposals in the consultation (including police station remove legal advice pilot) will be published later in the year.

15. Where relevant, we have used Census data³ to compare the demographics of clients and practitioners against the general population. The first set of results from the 2021 Census were released at the end of June 2022. However, the age split currently available for the 2021 Census do not match up with that of the LAA

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960290/data-compendium.pdf. Please note the data compendium covers the period April 2014 – March 2015 to April 2018 – March 2019 when it refers to fee income paid for the work undertaken by solicitors and April 2015 – March 2016 to April 2019 – March 2020 for fee income paid to barristers.

² MoJ, Legal Aid Agency figures available at: [Legal aid statistics: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/legal-aid-statistics-january-to-march-2022)

³2011 ONS Census data is available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>. And 2021 ONS Census data is available at: [First results from Census 2021 in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/census/2021census/2021censusdata)

client data. Therefore, Census 2011 data has been used instead for age comparisons. In addition, since information on disability and ethnicity have not been released yet for the 2021 Census, 2011 Census data has been used for this comparison. 2021 Census data has been used when comparing the gender of clients and practitioners with the general population.

16. Given that the information on disability, ethnicity and age is based on the 2011 Census, we considered using the Annual Population Survey 2019/20 as an alternative. However, we decided against it (please see footnote⁴ for details).

Monitoring and evaluation

17. Going forward, we will continue to monitor the equality impacts of these measures.
18. We will continue to pay 'due regard' to the Public Sector Equality Duty as the measures are implemented and will consider the most effective ways of monitoring equalities impacts.

The demographics of criminal legal aid practitioners and criminal legal aid clients

Criminal Legal Aid Practitioners

Barristers⁵:

19. **Gender:** The Data Compendium showed that there were 3,680 barristers who completed any level of public criminal work in 2019-20. Of these, 66% were male and 33% female. This compares against a split of 49% male and 51% female in the general population (Census 2021). However, it's worth noting that the gender split varies by years of practise. Table 2 below demonstrates that among those with few years of practise the gender split is much more even compared to groups of barristers with more practising experience. For instance, for barristers with 0-2 years of practise, 48% were male and 52% female. This contrasts with barristers who had 28+ years of practise; where 87% of these were male and 12% female.

Table 1: Gender of barristers doing any public criminal work in 2019-20

| Gender | Number/ percentage of barristers |
|-----------------------------------|----------------------------------|
| Number of barristers | 3,680 |
| Male | 66% |
| Female | 33% |
| Prefer not to say/ no information | 1% |
| All | 100% |

⁴ We compared the Census 2011 against the Annual Population Survey 2019-20 and the distribution by ethnicity and disability was very similar. Therefore, given the similarities in distribution, we have used the Census 2011 information for these comparisons (ethnicity and disability) for consistency as census data is used elsewhere. Regarding age, the Annual Population Survey data does not match the age brackets used by the Legal Aid Agency statistics on legal aid clients. Therefore, Census 2011 data was also used for age comparisons.

⁵ The Information in this section on barrister characteristics is collected each year by the Bar Standards Board as part of the Authorisation to Practise process, and is shared with the Bar Council

Table 2: Gender of criminal barristers by years of practise

| Years of practise | Number of criminal barristers | Male | Female | No information | All |
|-------------------|-------------------------------|------------|------------|----------------|-------------|
| 0 to 2 | 502 | 48% | 52% | 0% | 100% |
| 3 to 7 | 598 | 54% | 46% | 1% | 100% |
| 8 to 12 | 284 | 63% | 36% | 1% | 100% |
| 13 to 17 | 494 | 60% | 39% | 1% | 100% |
| 18 to 22 | 497 | 66% | 32% | 2% | 100% |
| 23 to 27 | 485 | 74% | 26% | 0% | 100% |
| 28+ | 820 | 87% | 12% | 0% | 100% |
| All | 3,680 | 66% | 33% | 1% | 100% |

20. **Age:** Table 3 shows that there were a very small number of barristers under the age of 25, who completed public criminal work in 2019-20. Around 20% of criminal barristers were aged 25-34, around a quarter were aged 35-44 and around another quarter were aged 45-54. 16% were aged 55+. This age distribution broadly resembles that for all barristers⁶.

Table 3: Age distribution of barristers doing any public criminal work in 2019-20

| Age range | Number/ percentage of barristers |
|-----------------------------|----------------------------------|
| Number of barristers | 3,680 |
| Under 25 | 1% |
| 25-34 | 20% |
| 35-44 | 23% |
| 45-54 | 26% |
| 55-64 | 12% |
| 65+ | 4% |
| No information | 14% |
| All | 100% |

21. **Ethnicity:** Table 4 below shows that 81% of criminal barristers were white, 6% were Asian/ Asian British, 3% were mixed race and a further 3% were black/ African/ Caribbean/ Black British. Excluding those for whom information on ethnicity was not available, the proportion of criminal barristers who were white was 86%, which matches that in the general population (86%, Census 2011).

Table 4: Ethnicity distribution of barristers doing any public criminal work in 2019-20

| Ethnicity | Number/ percentage of barristers |
|--|----------------------------------|
| Number of barristers | 3,680 |
| White | 81% |
| Asian/ Asian British | 6% |
| Mixed/ multiple ethnic group | 3% |
| Black/ African/ Caribbean/ black British | 3% |
| Other ethnic group | 1% |
| Prefer not to say/ no information | 6% |
| All | 100% |

⁶ [Statistics on practising barristers \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/statistics-on-practising-barristers/)

22. **Disability:** Table 5 shows that there was a high non-response rate of 50%, and so information related to disability is not as robust as compared to the information above on age, gender and ethnicity. Notwithstanding that, the vast majority of criminal barristers who responded with a yes/no answer declared that they did not have a disability. This contrasts significantly with the general population, where 18% classified themselves as disabled (Census 2011).

Table 5: Disability status of barristers doing any public criminal work in 2019-20

| Disability status | Number/ percentage of barristers |
|-----------------------------------|----------------------------------|
| Number of barristers | 3,680 |
| No | 48% |
| Yes | 2% |
| Prefer not to say/ no information | 50% |
| All | 100% |

Litigators:

23. The Data Compendium shows that there were just under 12,000 solicitors working for Criminal Legal Aid (CLA) firms in 2018-19.^{7,8} However, it is important to highlight that information was not available on how many of them worked on CLA related cases.

Table 6 (Table 2.1 in DC): Total number of Practising Certificate holders

| | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|-------------------------------------|---------|---------|---------|---------|---------|
| PC holders | 133,370 | 136,190 | 139,620 | 143,170 | 145,530 |
| Solicitors who worked for CLA firm* | 14,790 | 12,710 | 12,530 | 13,140 | 11,760 |

* A very small proportion of these (<1%) were not reported as being a PC holder, however as they were identified as working for a CLA firm they are included.

24. **Gender:** Their gender split closely matched that in the general population (Census 2021). However, whereas female solicitors made up more than 50% of those under the age of 45, they made up less than 50% in older groups, with female solicitors accounting for one in three among those between the age of 55 and 64.

Table 7 (Table 2.2 in DC): Solicitors working for CLA firms by gender

| | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|-----------------------------|---------------|---------------|---------------|---------------|---------------|
| Number of solicitors | 14,790 | 12,710 | 12,530 | 13,140 | 11,760 |
| Female | 47% | 48% | 49% | 49% | 51% |
| Male | 52% | 51% | 50% | 50% | 49% |
| Unknown | 1% | 0% | 1% | 1% | 1% |
| All | 100% | 100% | 100% | 100% | 100% |

⁷ The Data compendium includes data from 2014-15 to 2018-19.

⁸ We define CLA firms as those solicitors firm that received criminal legal aid fee payment during that year.

Table 8 (Table in 2.5 DC): Solicitors working for CLA firms by age and gender, 2018-19

| | Number of solicitors | Female | Male | Unknown |
|----------|----------------------|--------|------|---------|
| Under 25 | ~ | ~ | ~ | ~ |
| 25-34 | 2,360 | 69% | 28% | 3% |
| 35-44 | 3,500 | 62% | 38% | ~ |
| 45-54 | 2,980 | 45% | 55% | ~ |
| 55-64 | 2,060 | 33% | 67% | ~ |
| 65+ | 860 | 14% | 86% | ~ |
| All | 11,760 | 51% | 49% | 1% |

25. **Ethnicity:** BAME solicitors accounted for 22% of those with known ethnicity in CLA firms. This compared to 14% in the general population (Census 2011) and 17.5% amongst all PC holders (Law Society 2019 Statistical Report).

Table 9 (Table 2.6 in DC): Solicitors working for CLA firms by ethnicity

| | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|--|---------------|---------------|---------------|---------------|---------------|
| Number of solicitors | 14,790 | 12,710 | 12,530 | 13,140 | 11,760 |
| African-Caribbean | 1% | 1% | 1% | 1% | 1% |
| Asian | 10% | 11% | 12% | 11% | 12% |
| Chinese | 0% | 0% | 0% | 1% | 0% |
| African | 2% | 2% | 2% | 2% | 2% |
| Other ethnic origin | 2% | 2% | 2% | 2% | 2% |
| White European | 74% | 73% | 70% | 68% | 67% |
| Unknown | 10% | 10% | 12% | 15% | 15% |
| All | 100% | 100% | 100% | 100% | 100% |
| BAME solicitors as a percentage of all solicitors working for CLA firms | 16% | 17% | 18% | 17% | 18% |
| BAME solicitors as a percentage of all solicitors working for CLA firms with known ethnicity | 18% | 19% | 20% | 20% | 22% |

26. BAME solicitors were more likely to work in smaller CLA firms (firm size defined by number of partners) and they had higher representation in CLA firms that mainly did CLA work.

Table 10 (Table 2.22 in DC): Solicitors working for CLA firms by ethnicity and firm size, 2018-19

| | Number of solicitors | Very small | Small | Medium | Large |
|-------------------|----------------------|------------|-------|--------|-------|
| African-Caribbean | 140 | 17% | 46% | 22% | 15% |
| Asian | 1,420 | 19% | 50% | 18% | 13% |

| | | | | | |
|---------------------|--------|-----|-----|-----|-------|
| Chinese | 50 | ~ | 44% | 31% | >20%* |
| African | 260 | 29% | 49% | 13% | 9% |
| Other ethnic origin | 270 | 14% | 40% | 26% | 20% |
| White European | 7,830 | 7% | 38% | 37% | 18% |
| Unknown | 1,790 | 9% | 37% | 33% | 21% |
| All | 11,760 | 10% | 40% | 33% | 17% |

* The percentage eligible for secondary suppression in this table has been replaced by ">20%", to indicate its actual value is at least 20%. This has been completed to help mitigate potential disclosure risks without omitting a large amount of data in the table

Table 11 (Table 2.26 in DC): BAME solicitors as a percentage of solicitors working for CLA firms by specialisation, 2018-19

| | Average | Mostly criminal work | Some criminal work | No or little criminal work |
|--|---------|----------------------|--------------------|----------------------------|
| BAME solicitors as a percentage of all solicitors working for CLA firms | 18% | 25% | 16% | 15% |
| BAME solicitors as a percentage of all solicitors working for CLA firms with known ethnicity | 22% | 29% | 19% | 18% |

27. Although diversity improved steadily between 2014-15 to 2018-19 and that this increased diversity gradually fed through senior levels, female and BAME solicitors were still under-represented among partners in CLA firms by 2018-19.

Table 12 (Table 2.14 in DC): Solicitors working for CLA firms by position in the firm and gender, 2018-19

| | Number of solicitors | Female | Male | Unknown |
|----------|----------------------|--------|------|---------|
| Partners | 3,520 | 32% | 67% | ~ |
| Others | 8,250 | 58% | 41% | 1% |
| All | 11,760 | 51% | 49% | 1% |

Table 13 (Table 2.18 in DC): Percentage of BAME solicitors by position in the firm, 2018-19

| | Average | Partners | Other |
|--|---------|----------|-------|
| BAME solicitors as a percentage of all solicitors working for CLA firms | 18% | 17% | 19% |
| BAME solicitors as a percentage of all solicitors working for CLA firms with known ethnicity | 22% | 19% | 23% |

28. **Age:** Finally, broadly the age distribution of solicitors working in CLA firms in 2018-19 resembled that of the whole solicitor population (2019 Law Society Statistical Report), with middle age groups (35 to 54) concentrating more solicitors than younger and older groups. However, honing in on the younger age group (25-34), over time there does appear to be a reduction of this cohort which

points towards an older workforce compared to that in the general solicitor population⁹.

Table 14 (Table 2.3 in DC): Solicitors working for CLA firms by age

| | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|-----------------------------|---------------|---------------|---------------|---------------|---------------|
| Number of solicitors | 14,790 | 12,710 | 12,530 | 13,140 | 11,760 |
| Under 25 | ~ | ~ | ~ | ~ | ~ |
| 25-34 | 25% | 22% | 22% | 22% | 20% |
| 35-44 | 29% | 30% | 29% | 29% | 30% |
| 45-54 | 24% | 25% | 25% | 25% | 25% |
| 55-64 | 16% | 17% | 17% | 16% | 17% |
| 65+ | ~ | ~ | ~ | ~ | ~ |
| All | 100% | 100% | 100% | 100% | 100% |

29. As mentioned, the figures above refer to solicitors who worked for CLA firms, regardless of whether they carried out CLA work. For this reason, it is also useful to look into a subgroup of these solicitors, duty solicitors, who we know work on CLA cases.

30. **Age:** The data compendium shows that there were 4,600 duty solicitors in 2019. Of these 4,360 were matched to Law Society records and therefore additional information was available for these individuals. Like all solicitors working in CLA firms, middle-aged groups tend to concentrate more duty solicitors than younger and older groups. Also, like the population of solicitors working for CLA firms, the age distribution of duty solicitors points towards an older workforce than the general population of solicitors.

31. **Gender:** The gender parity achieved at the wider CLA solicitor level does not feed through to duty solicitors, where around 65% of duty solicitors were male and this percentage remained almost unchanged over the three-year period.

Table 15 (from Table 4.1 in DC): Number of duty solicitors on the rota by year

| | 2017 | 2018 | 2019 |
|---|-------|-------|-------|
| Number of duty solicitors ¹⁰ | 5,240 | 4,990 | 4,600 |

Table 16 (Table 4.3 in DC): Proportion of duty solicitors by age, 2017-2019*

| | 2017 | 2018 | 2019 |
|----------------------------------|--------------|--------------|--------------|
| Number of duty solicitors | 4,990 | 4,740 | 4,360 |
| Under 25 | 0% | 0% | 0% |
| 25-34 | 12% | 11% | 9% |
| 35-44 | 29% | 29% | 29% |
| 45-54 | 33% | 34% | 34% |

⁹ Based on own calculation using 2019 Law Society Statistics Report, table 2.4.

¹⁰ These values are from the LAA duty solicitor rotas. The 2017-18 numbers come from a 3-month rota whilst the 2018-19 and 2019-20 number came from 6-month rotas.

| | | | |
|---------------|------|------|------|
| 55-64 | 19% | 19% | 21% |
| 65+ | 6% | 7% | 8% |
| All | 100% | 100% | 100% |
| Average age** | 47 | 48 | 49 |

Table 17 (Table 4.2 in DC): Proportion of duty solicitors by sex, 2017-2019

| | 2017 | 2018 | 2019 |
|----------------------------------|--------------|--------------|--------------|
| Number of duty solicitors | 4,990 | 4,740 | 4,360 |
| Female | 36% | 36% | 35% |
| Male | 64% | 64% | 65% |
| All | 100% | 100% | 100% |

Legal Executives:

32. Finally, it is also worth pointing out that, according to the CILEX and CILEX Regulation's joint submission to CLAIR, 1,287 CILEX members were working in criminal practice. Of them:

- two thirds are females, which is a lower percentage than among all CILEX members but higher than the percentage of women in the general population (51%, Census 2021);
- 17% identified themselves as BAME – a higher percentage than among all CILEX members and higher than in the general population (14%, Census 2011);
- 7% have disability, compared to 4% among all CILEX members and 18% among the general population (Census 2011); and
- Their average age was 44, compared to 41 among all CILEX members.

Criminal legal aid clients:

33. LAA's annual data¹¹ on characteristics of Crime Lower¹² and Crime Higher¹³ clients has been used to inform equality considerations where it is considered that defendants who share a particular protected characteristic are likely to be affected. To the extent that the pre-charge engagement policy and increased fees for crime lower work could improve case progression for Crime Lower, this section considers the demographics of both Crime Lower and Crime Higher clients.

34. Table 18 below suggests defendants in both Crime Lower and Crime Higher are much more likely to be male compared to the general population. Defendants are also more likely to be BAME than the general population. Finally, Table 19 shows that around half of the Crime Higher and Crime Lower clients are in the 18-34 age group, this compares to around 20% for the general population.

¹¹ Crime Lower data is on a closed case basis except for age, which is taken from MAAT and uses granted applications. Crime Higher data is all based on granted applications.

¹² Crime Lower comprises legal advice provided to suspects before and after they have been charged, advice and representation for defendants in magistrates' courts, and prison law.

¹³ Crime Higher includes legal representation in the Crown Court and Higher Courts (Court of Appeal, Senior Courts Office, and the Supreme Court).

35. Table 18 also suggests that the proportion of Crime Higher clients with a disability (29%) is higher than that observed in the general population (18%). Conversely, for Crime Lower clients, disability (15%) appeared to be slightly less prevalent than in the population as a whole (18%). The impacts on defendants are discussed further under 'Indirect discrimination'.

36. A small number of respondents to the consultation mentioned the proposal to not uplift the prison law fees and the fact that BAME are over-represented in the prison population. However, the Government is not planning to reduce fees in prison law. In line with CLAIR's recommendation and considering the limited funds available, the Government is prioritising investment towards the front-end of the system. Moreover, Government is increasing fees by £115m pa which legal aid clients, amongst whom BAME are over-represented, will benefit from a better-functioning and more sustainable legal aid market that provides a good quality service. Nonetheless, the Government is currently considering the consultation responses on this and will respond formally in the final Government response.

Table 18: Demographics of Legal Aid Clients (Crime Lower and Crime Higher) 2021-22¹⁴ compared to general population¹⁵

| | Female | Male | BAME | White | Disability | No disability |
|--------------------|--------|------|------|-------|------------|---------------|
| Crime Lower | 15% | 85% | 24% | 76% | 15% | 85% |
| Crime Higher | 9% | 91% | 21% | 79% | 29% | 71% |
| General Population | 51% | 49% | 14% | 86% | 18% | 82% |

Table 19: Age Distribution of Legal Aid Clients (Crime Lower and Crime Higher) 2021-22¹⁶ compared to general population¹⁷

| | Under 18 | 18-24 | 25-34 | 35-44 | 45-54 | 55-64 | 65+ |
|--------------------|----------|-------|-------|-------|-------|-------|-----|
| Crime Lower | 8% | 16% | 32% | 27% | 13% | 4% | 1% |
| Crime Higher | 3% | 24% | 34% | 22% | 11% | 5% | 2% |
| General population | 21% | 9% | 13% | 14% | 14% | 12% | 16% |

Overall summary of equality impacts

37. When taken as an overall package, it is our view that these measures will benefit providers across criminal legal aid by ensuring that we pay more fairly for work

¹⁴ 2021-22 demographic data on legal aid clients from MoJ, Legal Aid Agency figures available at [Legal aid statistics: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2022). Note, figures have been adjusted to exclude those for whom this information was not available or was unknown.

¹⁵ Figures on ethnicity and disability are not available yet for the 2021 Census. Therefore, the figures in the table on ethnicity and disability for the general population are based on Census 2011. Information relating to sex is based on Census 2021.

¹⁶ 2021-22 demographic data on legal aid clients from MoJ, Legal Aid Agency figures available at: [Legal aid statistics: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2022)

¹⁷ Census 2011 has been used since the age categories in the Census 2021 data released so far do not match those in the LAA client data. However, it appears that, in broad terms, the age distribution of the general population has not changed significantly between the two Censuses.

done. According to the CLAIR focus groups poor pay affected minority groups and women in particular. Therefore, increasing fees will go some way to address these issues. The changes to pre-charge engagement and increased fees for crime lower and higher work could speed up case progression for the benefit of clients.

38. Some legal aid practitioners will benefit more than others from the delivery of all these changes. In addition, it is possible that the legal aid practitioners who particularly benefit from the measures might be more likely to share a protected characteristic. However, we do not believe that these potential uneven impacts will result in any particular disadvantage for any other groups of practitioners who share a protected characteristic. This is because the proportionate increase in annual spend that they will receive does not represent any decrease to another group of practitioners. Therefore, we do not believe that these uneven impacts amount to indirect discrimination.
39. The increase in fees mean that legal aid costs will rise, when compared to current levels. As such, particular groups of defendants may be required to make higher contributions towards their legal aid costs than under the current fee schemes. Given the lack of available data, we have been unable to undertake detailed analysis of the impacts of these measures on the contributions defendants are required to pay. We only have equalities data for all crime higher defendants that does not separately identify those required to make a contribution.
40. However, we know that annually, about 8,000 to 9,000 defendants at the Crown Court are required to pay an income contribution order (ICO). In many cases, the income contributions did not meet the current full defence costs of the case and therefore, in these cases, the client's income contributions will not be affected by an increase in fees. Approximately 1,500 to 2,000 capital contribution orders (CCOs) are also issued each year, representing between 2% and 3% of the legally aided population at the Crown Court, and with an average value of £15,000. As such, we anticipate that these measures are only likely to affect only a small proportion of individuals and with a maximum increase of 15%.
41. However, since the contribution levels are subject to means testing¹⁸ and are intended to recuperate a proportion of the cost of providing legal aid services, we consider any differences in impact are proportionate to the legitimate aim of paying fairly for work done. In respect of income contributions, there is a cap to the maximum income contribution individuals can be asked to contribute for their legal aid costs. This will assist in mitigating any rises in legal aid costs to individuals as a part of the changes made to the scheme. Overall, we consider that the impact on defendants that pay legal aid contributions will be limited.
42. A small number of respondents to the consultation mentioned the proposal to not uplift the prison law fees and the fact that BAME are over-represented in the prison population. However, the Government is not planning to reduce fees in prison law. In line with CLAIR's recommendation and considering the limited funds available, the Government is prioritising investment towards the

¹⁸ Criminal legal aid contributions and means test thresholds were considered more broadly as part of the Means Test Review, which was recently subject to public consultation.

front-end of the system. Nonetheless, the Government is currently considering the consultation responses on this and will respond formally in the final Government response in the autumn.

43. We therefore believe that these changes are unlikely to result in any particular disadvantage for any groups who share protected characteristics.

Eliminating unlawful discrimination, harassment and victimisation

Direct discrimination

44. Our assessment is that each of these measures are not directly discriminatory within the meaning of the Equality Act. The fee increases as they apply to the crime lower and crime higher fee schemes will not treat anyone with a protected characteristic less favourably.

Indirect discrimination

45. The key principle underpinning the changes is paying more fairly for work done. We do not consider that the impact of these measures will result in any particular disadvantage to any other groups of legal aid practitioners who share protected characteristics. This is because the proportionate increase in annual spend that all practitioners will receive does not represent any decrease in funding to any other group of practitioners. Therefore, we do not think these uneven impacts will amount to indirect discrimination.
46. These changes may have a disproportionate impact on a small number of clients (Crown Court defendants) who are required to make a contribution to their defence costs. We recognise that Crown Court defendants are more likely to be male, BAME and in the 18 to 35 age group than the general population.
47. Defendants who are financially eligible for legal aid in the Crown Court may be required to pay an income contribution towards the cost of their defence. Income contributions are refunded in the event of the defendant's acquittal while, if convicted, the defendant may be liable to pay towards their defence costs from their capital assets. An increase in legal aid will lead to increased costs which, in turn, might increase the contributions individuals are required to make. There is a cap to the maximum income contribution individuals can be asked to contribute for their legal aid costs. This will assist in mitigating any rises in legal aid costs to individuals as a part of the changes made to the scheme. Overall, we consider that the impact on defendants that pay legal aid contributions will be limited.
48. In summary, we recognise that there might be some uneven impacts as a result of these measures. However, where the impacts are uneven the measures represent a proportionate approach to achieving our legitimate objective – to pay more fairly for work done. If any disadvantages do materialise or if there was to be a disproportionate effect on a particular group, our conclusion remains the

same, that this will be justified as a proportionate means of meeting the legitimate aim of paying more fairly for work done.

Harassment and victimisation

49. We do not consider there to be a risk of harassment or victimisation as a result of these measures.

Advancing equality of opportunity

50. Consideration has been given to how these measures will impact on the duty to advance equality of opportunity by meeting the needs of practitioners who share a particular characteristic where those needs are different from the needs of those who do not share that particular characteristic.

51. The Ministry of Justice (MoJ) is mindful of the need to encourage those with protected characteristics to participate in public life and the need to advance equality of opportunity generally. The independently-led review looked at the sustainability of the market – and diversity was a part of that.

Fostering good relations

52. Consideration has been given to how these measures impact on the duty to foster good relations between people with different protected characteristics. We do not consider that there is anything within these measures that will have a negative impact regarding this objective.

Indirect discrimination: impact

53. We do not believe that any change in increased funding will cause a disadvantage to any other group with protected characteristics, as these changes raise fees across affected fee schemes and will not decrease funding for any other groups of practitioners. We do not believe any uneven impacts will cause indirect discrimination.