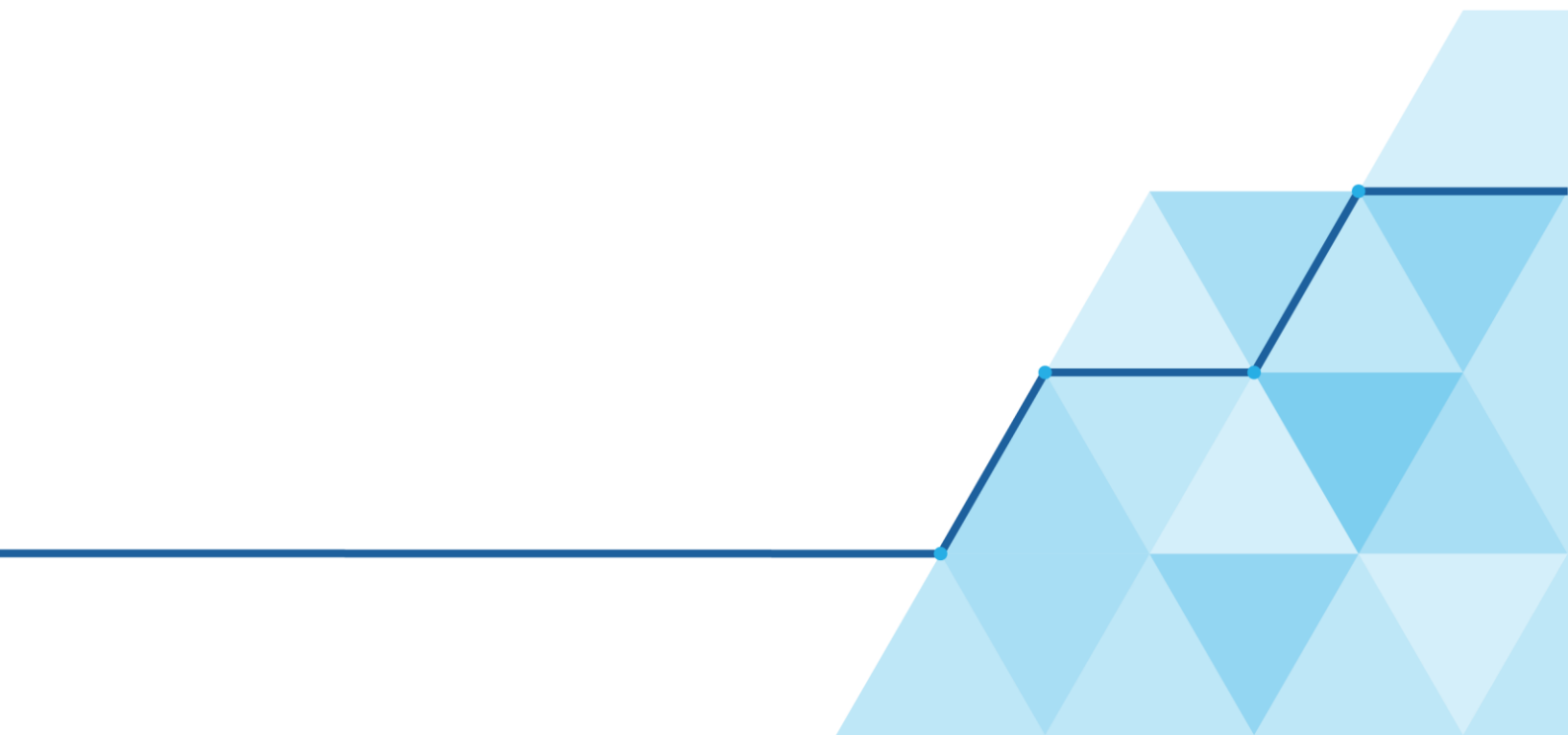




Ministry
of Justice

Equality Statement

**An accelerated package of measures
amending the criminal legal aid fee schemes**





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Equality Statement

**An accelerated package of measures amending
the criminal legal aid fee schemes**

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Policy summary

1. This Equality Statement has been written to be read alongside the Government Response: *Criminal Legal Aid Review, an accelerated package of measures amending the criminal legal aid fee schemes*, to which this statement is an annex.
2. As outlined in the consultation response, we intend to proceed with the accelerated package of measures amending the criminal legal aid fee schemes as consulted on. In summary, these measures allocate an additional £36 million to £51 million spending to the fee schemes to ensure we more pay fairly for work undertaken by criminal defence practitioners. These measures will change 4 areas:
 - how litigators and advocates are paid for work on unused material
 - how advocates are paid for work on paper-heavy cases
 - how advocates are paid for cracked trials in the Crown Court
 - how litigators are paid for work on sending cases to the Crown Court
3. These discrete areas represent a first step towards the fuller review which will focus on the sustainability of the whole criminal legal aid system.
4. The results of the consultation are set out in full in the government's response.
5. These are 4 of 5 areas of the Criminal Legal Aid Review ('the review'), that we agreed to accelerate. The fifth, how litigators are paid for pre-charge engagement, was not included in this consultation because proposals would have been dependent on new guidelines from the Attorney General's Office which were recently subject to public consultation.
6. This Equality Statement addresses the equality impacts of our policies for the accelerated areas.

Equality duty

7. 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)
 - foster good relations between different groups (those who share a relevant protected characteristic and those who do not)
8. Paying 'due regard' needs to be considered against the 9 'protected characteristics' under the 2010 Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Methodology to determine discrimination potential

9. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposals has been to identify the individuals whom the proposals will impact (the 'pool'), and then draw comparisons between the potential impacts of the proposals on those who share particular protected characteristics, with those who do not share those characteristics.
10. 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 proposals (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

11. As our proposals apply to both the LGFS and AGFS, the primary pool of individuals affected will be legal practitioners who deliver legal aid services. Practitioners can broadly be categorised as:

- litigators
- advocates¹

In this statement, we also refer to legal aid ‘providers’. This refers to the firms who hold legal aid contracts and self-employed barristers.

12. We have also identified legal aid clients, specifically, Crown Court defendants as a group that could be impacted by these proposals. This is 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 changes. Given the lack of available data, we have been unable to undertake detailed analysis of the impacts on clients. However, these are likely to be limited.

¹ “Litigators” refers to solicitors and legal executives who are carrying out litigation work. “Advocates” refers to both solicitor advocates and barristers.

Data sources

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

For practitioners:

- the Bar Standards Board data on all barristers, 2018²
- the Law Society data on all solicitors, 2018³
- the Chartered Institute of Legal Executives data on all legal executives, 2015⁴
- Legal Aid Agency (LAA) survey data on providers with legal aid contracts (firms which carry out LGFS and AGFS work), 2015⁵

For clients:

- LAA data on clients collected through provider billing information, 2018–19⁶

14. On the basis of the available data, we have used sources that show:

- the ethnicity, sex, disability status and age of clients
- the ethnicity and sex of barristers, solicitors and legal executives
- the ethnicity, sex and age of the legal aid providers

15. While the LAA survey of providers did ask for information on disability, religion and sexual orientation, the number of respondents that disclosed this information was too low to make robust conclusions. 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, pregnancy and maternity, marriage and civil partnership or gender reassignment. We are working with the Law Society and the Bar Council to improve our equality data, which will inform our equality work going forward.

² Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/practising-barristers.html>

³ Law Society statistics available at: <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2018/>

⁴ Chartered Institute of legal Executives available at: https://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity/diversity-statistics/cilex-membership-diversity

⁵ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

⁶ MoJ, Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2019>

16. Where relevant, we have used the following source to compare the demographics of clients and practitioners with the general population:

- Census data 2011.⁷

⁷ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

Monitoring and evaluation

17. During the consultation period, we engaged with practitioners in 8 virtual and physical 'roundtables' which allowed practitioners to raise equality considerations where appropriate.
18. Going forward, we will continue to monitor the equality impacts of these proposals. We will continue to pay 'due regard' to the Public Sector Equality Duty as the proposals are implemented and will consider the most effective ways of monitoring their equality impact.

The demographics of legal practitioners and legal aid clients

19. Advocates:⁸

- Table 1 shows the demographics of the legal profession. It demonstrates that 62% of barristers are male, which is a higher proportion than solicitors and legal executives. It is also more than the general population, 49% of whom are male.
- Furthermore, there is a higher proportion of white barristers among those appointed to Queen's Counsel (QCs) when compared to barristers overall and the general population. There is missing ethnicity data (reported as unknown in Table 1) which may be influencing this finding.
- Barristers can be self-employed and a member of chambers ('Self-employed'), directly employed in organisations ('Employed'), or work as a 'Sole practitioner'. The figures in Table 2 suggest the majority of barristers are within chambers and relatively few are sole practitioners. Sole practitioners appear more likely to be Black Asian and Minority Ethnic (BAME) than self-employed barristers,⁹ and there is a higher proportion of employed barristers who are female when compared to other types of barrister.
- While similar data on the working arrangements of solicitor advocates is unavailable, the wider litigator market is such that we know the majority of solicitor advocates are employed within multi-practitioner firms rather than as sole-practitioners. Table 1 shows the percentage of barristers who are female (37%) is less than the percentage of solicitors that are female (51%). This could be an indication that a solicitor advocate is more likely to be female than a barrister, but we would need more data to draw any firm conclusions here.

20. Litigators:

- The Law Society data in Table 1 shows that the proportion of male and female solicitors is broadly in line with the general population. Again, it is difficult to draw conclusions from the data on ethnicity because of the high proportion (17%) who are 'unknown'. The proportion of legal executives that are female (74%) is larger than the proportion of other types of lawyer who are female, and the general population (51%).

⁸ More information on the demographics of all affected individuals is available at annex A and B.

⁹ As above, the missing ethnicity data may be influencing this finding.

Table 1: Demographics for the whole legal profession, 2018–19^{10,11,12,13,14,15}

	Sex			Ethnicity		
	Male	Female	Unknown	White	BAME	Unknown
QC	84%	16%	0%	88%	8%	4%
Barristers*	62%	37%	1%	79%	13%	8%
Solicitors**	49%	51%	0%	69%	14%	17%
Legal executives	26%	74%	0%	86%	12%	1%
General population (2011)	49%	51%	0%	84%	15%	0%

* including QCs

** Including solicitor advocates

Table 2: Demographics of barristers with different working arrangements, 2017–18^{16,17}

Type of barrister	Sex			Ethnicity		
	Male	Female	Unknown	White	BAME	Unknown
Self-employed	64%	35%	1%	81%	12%	7%
Employed	53%	47%	0%	73%	15%	12%
Sole-practitioners	63%	36%	1%	61%	28%	12%
General population (2011)	49%	51%	0%	84%	15%	0%

¹⁰ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/practising-barristers.html>

¹¹ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/queens-council-statistics.html>

¹² Law Society statistics available at: <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2018/>

¹³ Chartered Institute of legal Executives available at: https://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity/diversity-statistics/cilex-membership-diversity

¹⁴ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

¹⁵ Throughout this equality statement, percentages have been rounded to the nearest 1% and so totals may not equal exactly 100%.

¹⁶ Bar Standards Board statistics available at: www.barstandardsboard.org.uk/media-centre/research-andstatistics/statistics/practising-barrister-statistics/

¹⁷ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

21. Legal aid providers:

- While the demographics above relate to the legal practitioner market as a whole, we can also look more specifically at the demographics of advocates and litigators within the publicly funded legal aid market.
- In January and February 2015, the LAA carried out an online survey to learn more about the providers doing legal aid work.¹⁸ The survey was sent to all 2,262 legal aid providers (across the entire legal aid market) to complete between 19 January and 27 February 2015. 644 providers completed the survey, a response rate of 28%. The survey asks about the protected characteristics of those who have ownership or managerial control of the firm (2,057 people), not all of the legal practitioners working at the organisations who responded (13,578).
- The information gathered through this survey indicated that in positions of managerial control, there was an overrepresentation of males when compared to the general population, as well as an overrepresentation of the age group 40–59.
- However, the limited response rate, the fact that the data asks only for the manager or head of the firm, and that the data spans the entire legal aid market, rather than just those employing advocates and litigators who undertake LGFS and AGFS work, significantly limits our ability to draw meaningful conclusions. The provider responses should be used only as an indication of the demographics of practitioners in the publicly funded legal aid market.

22. The clients (Defendants at the Crown Court):

- Tables 3 and 4 below show that defendants at the Crown Court are more often males (86%) and more often aged 18–44 (79%), when compared with the general population. While the majority of clients for whom information on ethnicity is available are white, it is difficult to draw firm conclusions from the ethnicity data given the large proportion of clients whose ethnicity is unknown.
- Table 3 shows that the percentage of those not considered disabled is significantly higher than those who either are considered disabled or where the status of disability is not known, but that defendants are more likely to be considered disabled than the general population. This data has informed equality considerations where it is considered that defendants who share a particular protected characteristic are likely to be affected.
- This data is limited because it shows the demographics for all legal aid clients at the Crown Court. However, our proposals will affect only those defendants who are asked to pay a contribution towards the cost of their case. The impacts on defendants are discussed further at paragraph 30 under ‘Indirect discrimination’.

¹⁸ More detail on the findings of the LAA’s survey can be found at annex A.

Table 3: Demographics of legal aid clients at the Crown Court, 2018^{19,20,21}

				Black/ Asian/ Minority ethnic			Not considered disabled (2017)	Considered disabled (2017)	Unknown (2017)
	Female	Male	Unknown	White	Unknown				
Crime higher	9%	86%	4%	87%	6%	8%	73%	27%	0%
General population (2011)	51%	49%	0%	84%	16%	0%	82%	18%	0%

Table 4: Age distribution of legal aid clients at the Crown Court, 2018^{22,23}

	Under 18	18–24	25–34	35–44	45–54	55–64	65 and over
Crime higher	5%	26%	33%	20%	11%	4%	2%
General population (2011)	21%	9%	13%	14%	14%	12%	16%

¹⁹ MoJ, Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2019>

²⁰ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

²¹ For disability, we have used data from 2017–18 because there was an issue with the reliability of this year's data.

²² MoJ, Legal Aid Agency figures available at: www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018

²³ Based on population between 16–64, working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

Overall summary of equality impacts

23. When taken as an overall package, it is our view that the range of proposals will benefit litigators and advocates across criminal legal aid by ensuring that we pay more fairly for work done.
24. Some legal aid practitioners will benefit more than others from the delivery of these proposals. In addition, it is possible that the legal aid practitioners who particularly benefit from the proposals might be more likely to share a protected characteristic. We anticipate that junior advocates and solicitor advocates are more likely to undertake the work that will be impacted by these proposals than QCs. As a result, junior advocates and solicitor advocates will receive proportionately more than they currently do of annual AGFS spend. Junior advocates, as demonstrated in Table 1, are more likely to be BAME and female. Solicitors are more likely to be BAME and female than barristers, which might suggest that solicitor advocates are also more likely to be BAME and female, although we would need more data to say for certain. However, we do not believe that these 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.
25. It may be that legal aid costs for particular offences 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. However, since the contribution levels are subject to means testing²⁴ 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.
26. We therefore believe that our proposals are unlikely to result in any particular disadvantage for any groups who share protected characteristics.

²⁴ Criminal legal aid contributions and means test thresholds are currently being considered more broadly as part of the Means Test Review, which is due to report in late summer 2020. We will also assess the equality impacts of any change to contribution amounts that might occur as a result of these policies in the context of the Means Test Review.

Eliminating unlawful discrimination, harassment and victimisation

Direct discrimination

27. Our assessment is that each of the proposals on which we are consulting are not directly discriminatory within the meaning of the Equality Act. The fee increases as they apply under AGFS and LGFS will not treat anyone with a protected characteristic less favourably.

Indirect discrimination

28. Junior alone/led junior advocates and solicitor advocates will receive a slightly higher proportion of the additional spend than they currently do. However, our initial assessment is that these proposals are not indirectly discriminatory within the meaning of the Equality Act.

29. The key principle underpinning the reforms is paying more fairly for work done. Our proposals for unused, paper-heavy cases and cracked trials provide particularly beneficial impacts for junior advocates and solicitor advocates. Table 1 above shows women and BAME practitioners are overrepresented among junior advocates and possibly among solicitor advocates, although we would need more data to make robust conclusions here. We therefore recognise that within the profession, women and BAME practitioners are more likely to be undertaking the work which will benefit from our proposals. However, we do not consider that the impact of these proposals 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 women and BAME 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.

30. Our proposals may also 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 and aged 18–44 than the general population.

31. Defendants who are financially eligible for legal aid 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.

32. Given the lack of available data, we have been unable to undertake detailed analysis of the impacts of these proposals on the contributions defendants are required to pay, but we know that in 2018–19 only around 9% of Crown Court defendants were required to pay an income contribution. In many of these cases, these income contributions did not meet the current full defence costs of the case and therefore the client's income contributions will not be affected by an increase in fees. Only around 3% of Crown Court defendants were liable to pay capital contributions in 2018–19. As such, we anticipate that our proposals are only likely to affect only a small proportion of individuals. Furthermore, since the contribution levels are subject to means testing and are intended to recuperate a proportion of the cost of providing legal aid services, we consider any differences in impact to be proportionate to the legitimate aim of paying fairly for work done.
33. In summary, we recognise that there might be some uneven impacts of these proposals. However, where the impacts are uneven the proposals 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 would be justified as a proportionate means of meeting the legitimate aim of paying more fairly for work done.

Harassment and victimisation

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

Advancing equality of opportunity

35. Consideration has been given to how these proposals 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.
36. Our proposals increase the proportionate spend on junior barristers and solicitor advocates, who are more likely to be BAME and female. This has the potential to encourage the retention of female and BAME advocates and could promote diversity within the profession as a whole.

37. 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 will focus on sustainability of the market – and diversity will be a part of that.

Fostering good relations

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

Indirect discrimination: impact

Unused material

39. Unused material is material that is relevant to a case (material that is capable of undermining the prosecution case and/or assisting the defence), but not used as part of the prosecution evidence presented in court.
40. This proposal applies to cracked trials and contested trials and excludes guilty pleas because it is rare that unused material would need to be reviewed in these cases. A cracked trial is a case that does not proceed to trial as anticipated either on or before the first day of trial.
41. For reviewing unused material in cracked trials and trials, litigators and advocates will be paid the equivalent of 1.5 hours' work for 0–3 hours spent reviewing unused material disclosed to the defence.
42. For those cases where more than 3 hours is spent reviewing unused material, payment will be at hourly rates equivalent to the existing AGFS or LGFS special preparation hourly rates, subject to the assessment of those claims by the LAA. We have chosen to introduce fees equivalent to special preparation rates because they are currently used to remunerate similar work reviewing evidence.
43. Our proposal will have positive financial impacts for all legal aid providers who complete work on crack or trial cases, as well as those that work on unused material in excess of 3 hours, ensuring that pay more accurately reflects work done.²⁵ It has not been possible to analyse impact by litigator type because we only hold data on the firms that carry out cases – rather than individual litigators. Junior alone/led juniors and solicitor advocates will receive a slightly higher proportion of the additional spend than they currently do. 85% of the extra funding for advocates is expected to accrue to junior alone/led juniors, compared to the 76% of 2019-20 AGFS spend they received.²⁶ Additionally, 17% of the extra funding that could be allocated for advocates is expected to accrue to solicitor advocates, compared to the 13% they received in 2019-20 AGFS spend.²⁷

²⁵ For more detail on the impacts of all policy proposals, please refer to the impact assessment, which accompanies this statement as an annex to the consultation response.

²⁶ Please see the Impact Assessment, under 'Benefits of Option 5', Table 5

²⁷ Please see the Impact Assessment, under 'Benefits of Option 5', Table 7

44. While we recognise that junior (and perhaps solicitor) advocates are more likely than QCs to be BAME and female, we do not believe that any change in the proportion of funding to advocates will cause a disadvantage to any other group with protected characteristics, as our policy proposals will not decrease funding for any other groups of practitioners.
45. We do not believe these uneven impacts will cause indirect discrimination.

Paper-heavy cases

46. Advocates will be able to claim payments in addition to the current AGFS fee in cases involving an unusually high amount of served evidence at the relevant hourly special preparation rate, subject to the assessment of those claims by the LAA. We are proposing new thresholds based on pages of prosecution evidence (PPE) across the offence bands to capture those cases that will be eligible to claim additional payment for work considering pages in excess of those thresholds.²⁸
47. Our proposal has beneficial financial impacts for all advocates, ensuring that the fee more accurately reflects work done. Junior alone/led juniors will receive slightly higher proportions of the additional annual spend on AGFS than they received in 2019–20. 86% of the extra funding is expected to accrue to junior and led junior advocates, compared to the 76% of 2019–20 AGFS spend they received.²⁹ 14% of additional funding is expected to accrue to solicitor advocates, compared to the 13% of 2019–20 spend they received.³⁰
48. While we recognise that junior (and perhaps solicitor) advocates are more likely than QCs to be BAME and female, we do not believe that any change in the proportion of funding to advocates will cause a disadvantage to any other group with protected characteristics, as our policy proposals will not decrease funding for any other groups of practitioners. Therefore, we do not believe these uneven impacts will cause indirect discrimination.

Cracked trials

49. We will expand the applicability of cracked trial fees to all cases that crack after the first Crown Court hearing (at which a plea is entered), usually the Plea and Trial Preparation Hearing (PTPH), removing the thirds distinction from the AGFS. Currently, only cases that crack in the final third of the time between the PTPH and the date on

²⁸ These thresholds are set out in the Consultation Document, annex B

²⁹ Please see the Impact Assessment, under 'Benefits of Option 5', Table 5

³⁰ Please see the Impact Assessment, under 'Benefits of Option 5', Table 7

which the case is listed for trial are eligible for a cracked trial fee. We will also increase the cracked trial basic fees from 85% to 100% of the brief fee.

50. At this stage, we are only proposing changes to the AGFS in relation to cracked trials. Due to structural differences between the two schemes, the way cracked trials are paid under the AGFS does not apply in the same way to payments for cracked trials under the LGFS.
51. We will consider cracked trial payments under the LGFS as part of the prioritised work into fee schemes (especially the crime lower ones), which will sit alongside the independently-led review of the sustainability of the market.
52. Our proposal has beneficial financial impacts for advocates, ensuring that their pay more accurately reflects work done. Junior alone/led junior and solicitor advocates will receive higher proportions of additional spend on AGFS than they received in 2019-20. 96% of the extra funding is expected to accrue to junior alone and led junior advocates, compared to the 76% of 2019-20 AGFS spend they received.³¹ 21% of extra funding is expected to accrue to solicitor advocates, compared to 13% of 2019-20 spend.³²
53. While we recognise that junior advocates are more likely than QCs to be BAME and female, we do not believe that any change in the proportion of funding to advocates will cause a disadvantage to any other group with protected characteristics, as our policy will not decrease funding for any other groups of practitioners. Therefore, we do not believe uneven impacts will cause indirect discrimination.

Sending cases to the Crown Court

54. We will pay an increase in fees equivalent to 4 hours' work in the Magistrates' Court to cover the work now done to comply with the Better Case Management initiative ahead of sending cases to the Crown Court. This is a change from our original proposal to pay 2 hours' worth of work.
55. Our proposal has beneficial financial impacts for solicitors and equivalent fee earners ensuring that their fee more accurately reflects work done. We know that the sex and ethnicity demographics of solicitors in general is broadly in line with the general population, while 74% of legal executives (more than the general population) are women. However, it has not been possible to analyse the impact of our proposals by grade of fee earner because we only hold data on the firms who undertake this work.

³¹ Please see the Impact Assessment, under 'Benefits of Option 5', Table 5

³² Please see the Impact Assessment, under 'Benefits of Option 5', Table 7

56. This policy applies the same fee to all cases sent to the Crown Court, so we do not think there will be any uneven impacts. Therefore, we think it is unlikely that there will be any risk of indirect discrimination.

Annex A: Practitioner and provider characteristics

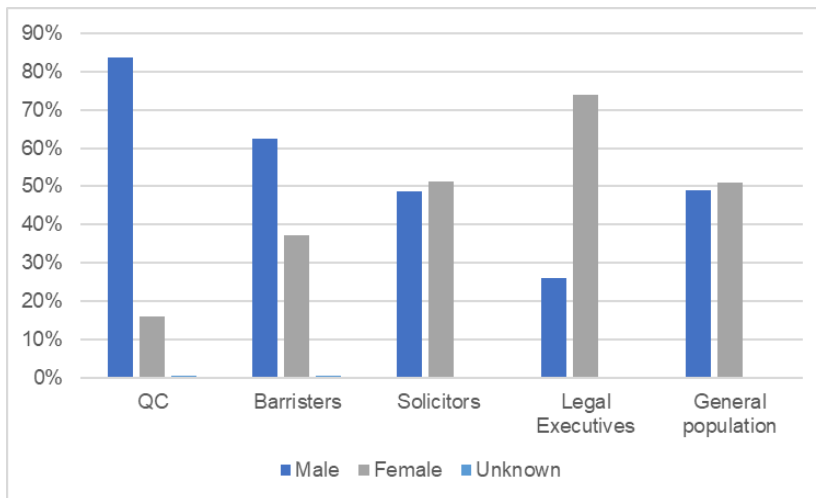
The Bar Standards Board, Law Society and Chartered Institute of Legal Executives regularly publish data on the sex of their membership. This data is laid out below. However, to look more closely at legal aid lawyers specifically, there is a lack of recent data on demographics. Therefore, we have used the most recent data, which is from the Legal Aid Agency's provider survey in 2015.

Bar Standards Board, Law Society and Chartered Institute of Legal Executives data

Sex

Comparing these different data sources, QCs are more likely to be male than other lawyers and the population in general. Barristers are more likely to be male compared to the general population, and legal executives are more likely to be female.

Figure 1: Proportion of lawyers by sex compared to the general population, 2018^{33,34,35,36,37}



Ethnicity

It is difficult to make firm conclusions from this data, because of the high proportion of people who did not disclose their ethnicity, but the statistics we do have indicate that the ethnic demographic of lawyers is broadly similar to that of the general population. However, the proportion of QCs who reported being of BAME backgrounds is significantly less (8%) than the general population (16%).

³³ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/practising-barristers.html>

³⁴ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/queens-council-statistics.html>

³⁵ Law Society statistics available at: <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2018/>

³⁶ Chartered Institute of legal Executives available at: https://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity/diversity-statistics/cilex-membership-diversity

³⁷ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

Figure 2: Proportion of lawyers by broad ethnic group, compared to the general population, 2018^{38,39,40,41}

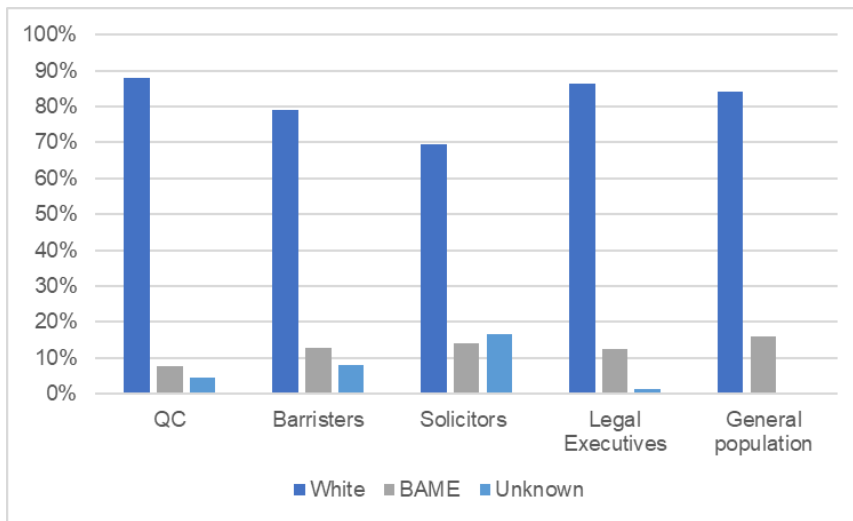
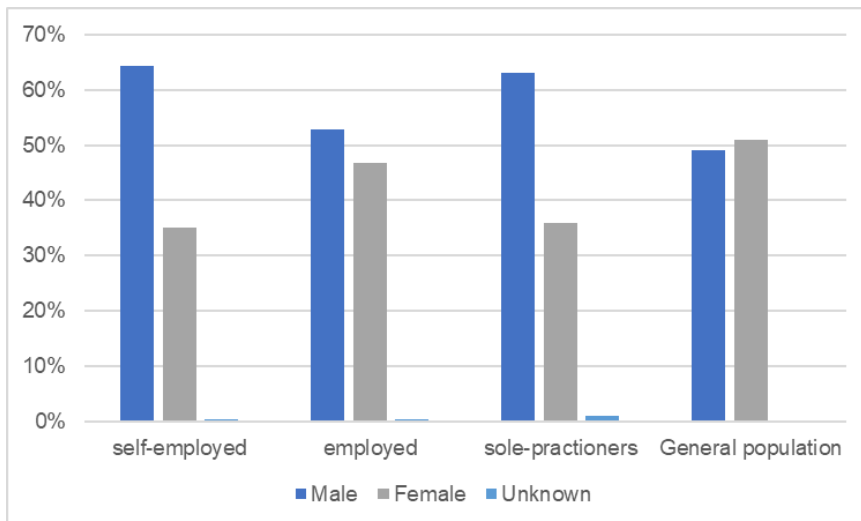


Figure 3: Proportion of barristers with different working arrangements by sex, compared to the general population, 2018⁴²



³⁸ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/practising-barristers.html>

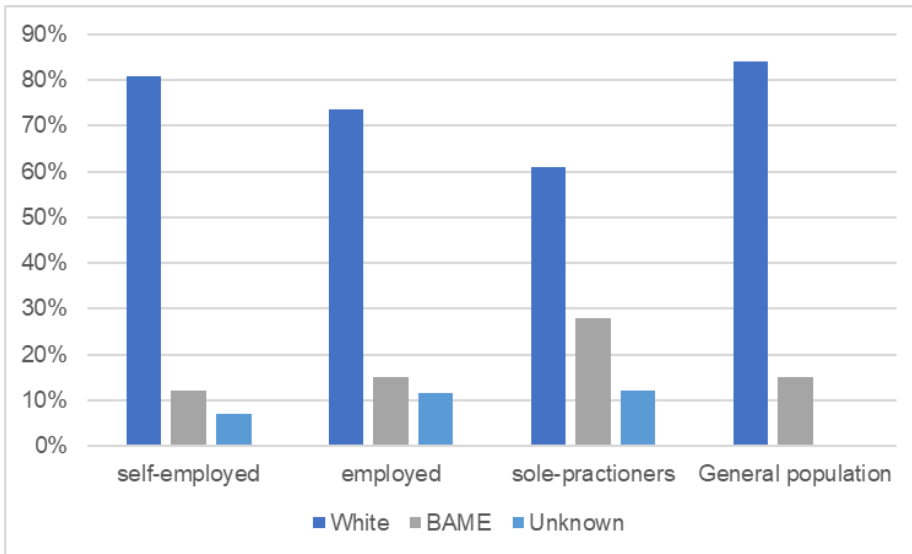
³⁹ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/queens-council-statistics.html>

⁴⁰ Law Society statistics available at: <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2018/>

⁴¹ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

⁴² Bar Standards Board statistics available at: www.barstandardsboard.org.uk/media-centre/research-andstatistics/statistics/practising-barrister-statistics/

Figure 4: Proportion of barristers with different working arrangements by ethnicity, compared to the general population, 2018⁴³



Legal Aid Agency provider data

In January and February 2015, the LAA carried out an online survey to learn more about the providers doing legal aid work. The survey was sent to all 2,262 legal aid providers to complete between 19 January and 27 February 2015. 644 providers completed the survey, a response rate of 28%, this low response rate should be taken into account when interpreting all results.

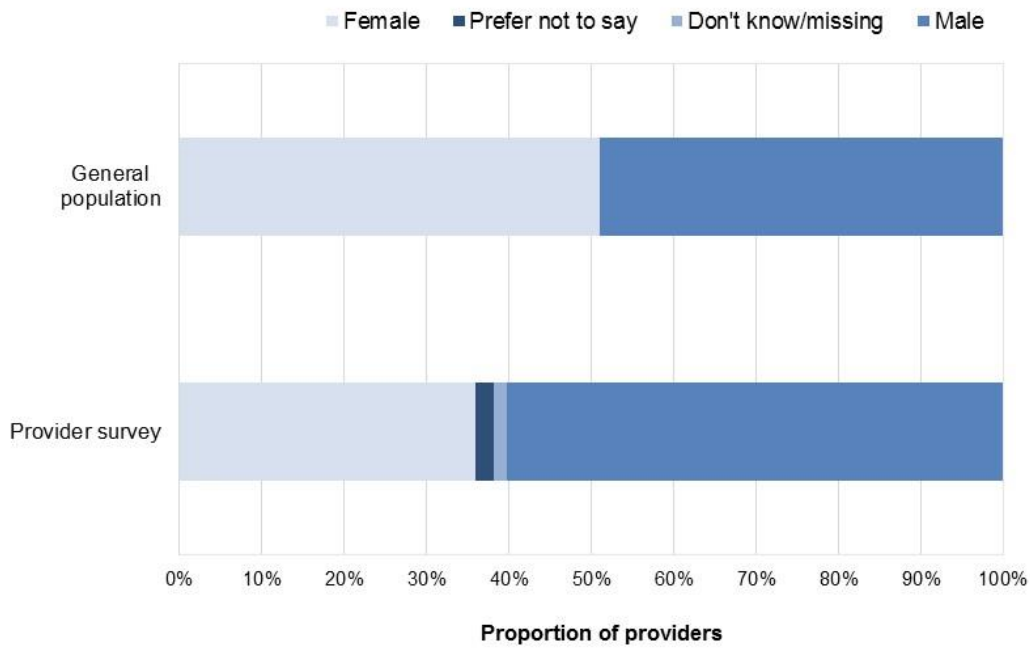
The survey asks about the protected characteristics of those who have ownership or managerial control of the firm (2,057 people), not the total headcount of the firms who responded (13,578). Here, the results for this group are presented alongside figures for the general population of England and Wales from the 2011 census for comparison.

Sex

60% of respondents were male, compared to 49% among the general population (Figure 5). This may partly reflect the fact that employment rates are higher for men than women, especially over the age of 22.

⁴³ Bar Standards Board statistics available at: www.barstandardsboard.org.uk/media-centre/research-andstatistics/statistics/practising-barrister-statistics/

Figure 5: Proportion of responding providers by sex, compared to the general population, 2015^{44,45}



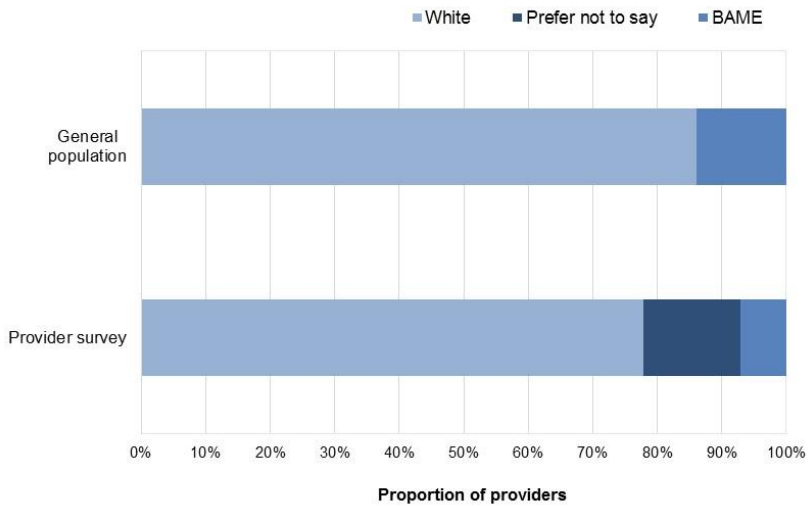
Ethnicity

The proportion of respondents who reported being of BAME backgrounds is broadly similar to the general population, at 15%, but 7% of respondents preferred not to answer this question (Figure 6).

⁴⁴ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

⁴⁵ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

Figure 6: Proportion of responding providers by broad ethnic group, compared to the general population, 2015⁴⁶

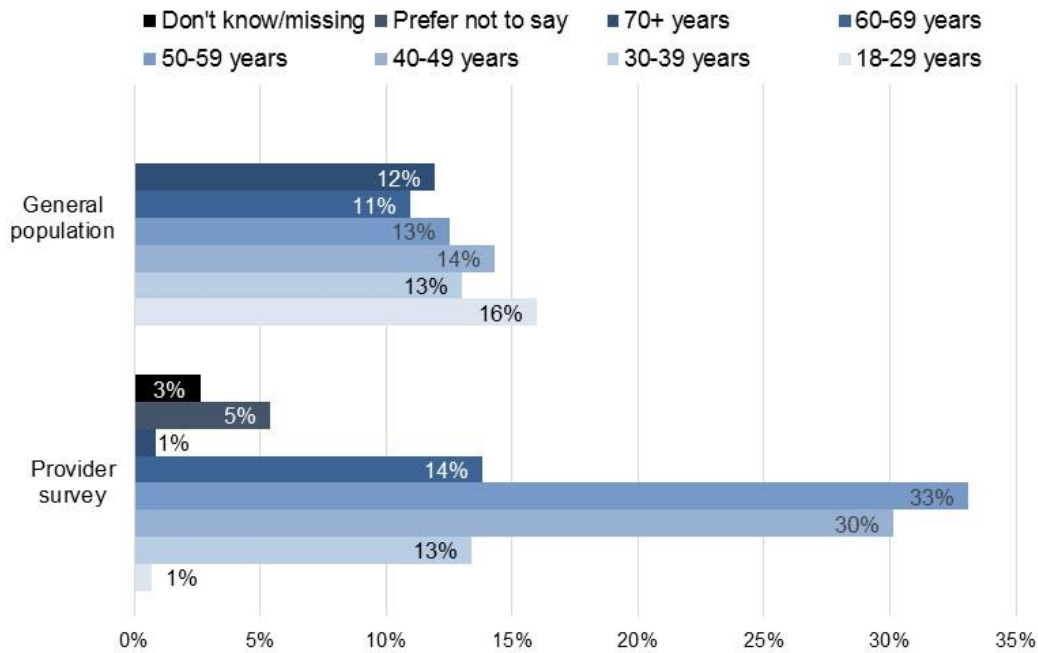


Age

Looking at those aged over 18, the majority of respondents to the survey were aged between 40 and 59 (63%), this is much higher than the general population where around a quarter of over-18s are in this age group (Figure 7).

⁴⁶ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

Figure 7: Proportion of responding providers by age group, compared to the general population, 2015⁴⁷

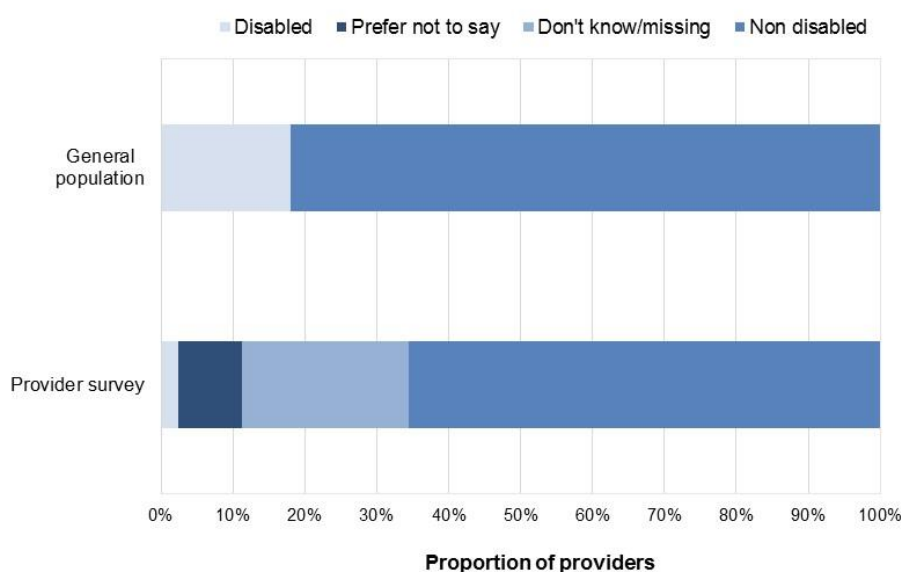


Disability

A large proportion (32%) of respondents did not declare their disability status (either prefer not to say or don't know/missing), so it is difficult to draw meaningful conclusions (Figure 8). Only 2% of respondents considered themselves to have a disability. This compares to 18% of the general population of England and Wales who stated they had a disability in the 2011 census. The labour market statistics show that disabled people are far less likely to be in employment than non-disabled people.

⁴⁷ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

Figure 8: Proportion of responding providers by disability status, compared to the general population, 2015⁴⁸



Religion

As Figure 9 shows, a large proportion (43%) of respondents did not declare their religion (either prefer not to say or don't know/missing), which limits any interpretation of the result. However, the two largest groups in the sample were Christian (30%) and not religious (18%), these are also the two largest groups in the general population.

Figure 9: Proportion of responding providers by religion, compared to the general population⁴⁹

Religion	Provider survey	General Population
Christian	30%	59%
Not religious	18%	25%
Muslim	3%	5%
Jewish	2%	1%
Hindu	1%	2%
Sikh	1%	1%
Any other religious beliefs	1%	<1%
Buddhist	<1%	<1%
Prefer not to say	18%	7%
Don't know/missing	25%	0%

⁴⁸ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

⁴⁹ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

Sexual orientation

Figure 10 shows that nearly a quarter of respondents did not declare their sexual orientation (either prefer not to say or don't know/missing), which limits any interpretation of the result. Figures on sexual orientation for the general population are not available from the census data, however, other studies have estimated that about 2.2% of the general population are gay, lesbian or bisexual⁵⁰ this is similar to the result of the survey, where about 2% of respondents said they were gay, lesbian or bisexual.

Figure 10: *Proportion of responding providers by sexual orientation*⁵¹

Sexual orientation	Provider Survey
Heterosexual/straight	73%
Gay man	1%
Gay woman/lesbian	<1%
Bisexual	<1%
Other	<1%
Prefer not to say	16%
Don't know/missing	8%

⁵⁰ ONS, Sexual Orientation, UK: 2018, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/bulletins/sexualidentityuk/2018>

⁵¹ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

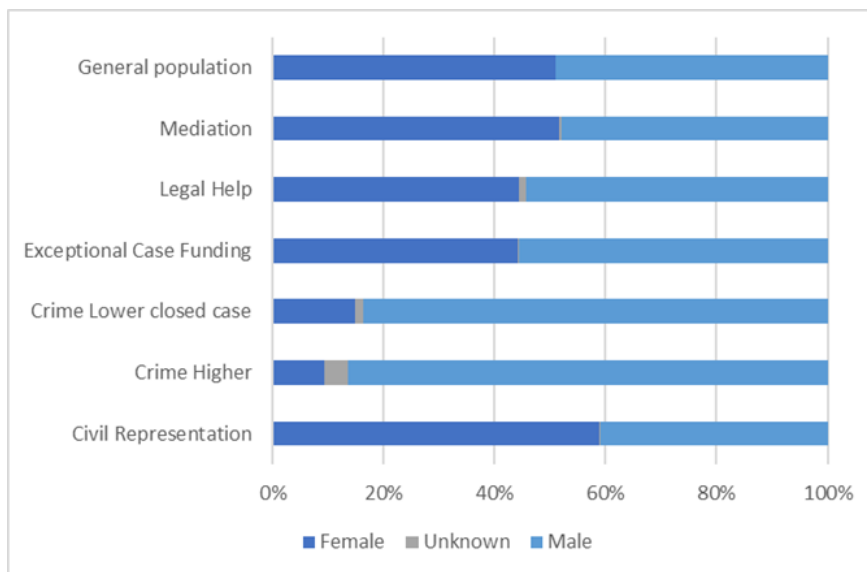
Annex B: Client characteristics⁵²

These charts show the breakdown of client characteristics over the different areas of legal aid compared with the national breakdown from the latest population estimates from the Office for National Statistics (2011). Only defendants from the Crown Court are likely to be affected by these proposals, so the relevant section for these purposes in each of the following sections are the Crime Higher fields.

Sex

The profile of criminal legal aid clients differs from the general population (49%) with a much greater proportion of male clients (86%). This reflects the picture across the criminal justice system and has been consistent throughout all the years for which we have data.

Figure 1: Proportion of legal aid clients in 2018–19 by sex, compared to the general population^{53,54}



Disability

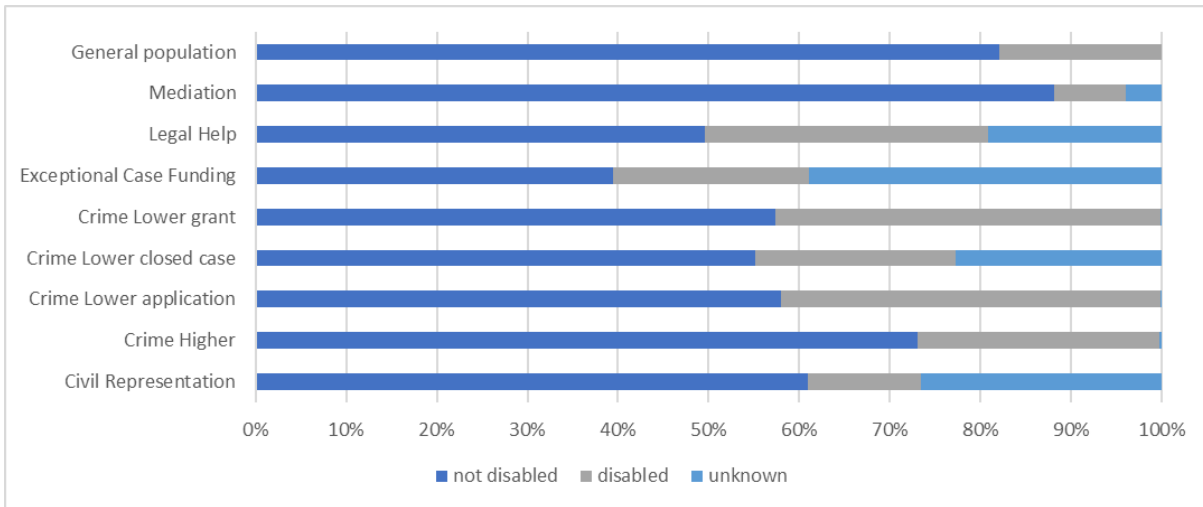
Figure 2 shows the proportion of legal aid clients who consider themselves to have a disability. 2017–18 data has been used instead of 2018–19, because there appeared to be data quality issues with the later data.

⁵² These data sets exclude respondents who left the answer to the question blank.

⁵³ MoJ, Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2019>

⁵⁴ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

Figure 2: Proportion of legal aid clients in 2017–18 by disability status, compared to the general population^{55,56}



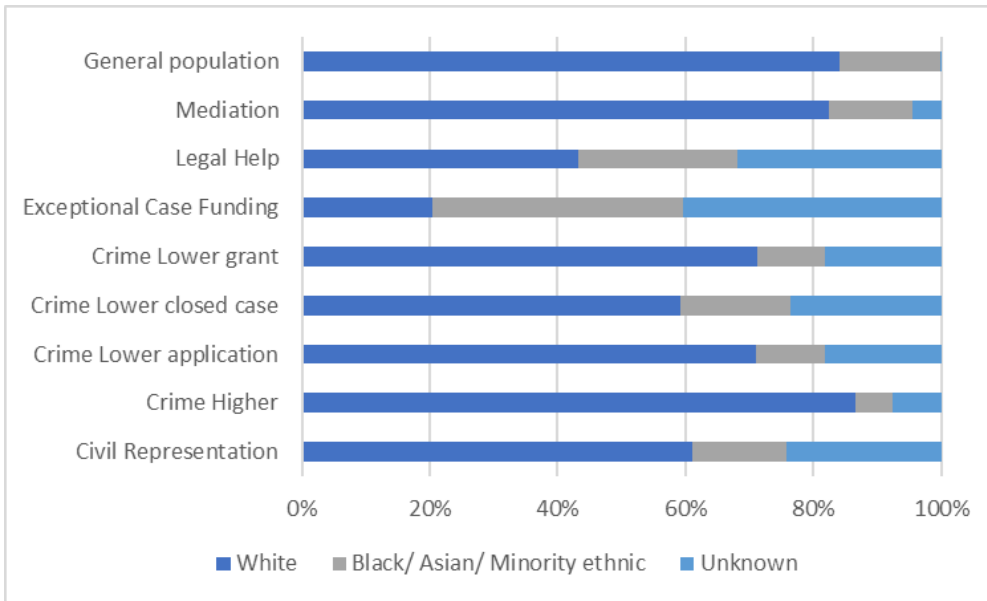
Ethnicity

Figure 3 compares the proportion of legal aid clients who are from black and minority ethnic (BAME) origins with the general population. It is difficult to draw firm conclusions from this comparison because of the relatively high proportion for which ethnicity is unknown. The overall ethnic profile of legal aid clients in 2018–19 was similar to that in 2017–18.

⁵⁵ MoJ, Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-october-to-december-2018>

⁵⁶ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

Figure 3: Proportion of legal aid clients in 2018–19 by broad ethnic group compared to the general population^{57,58}



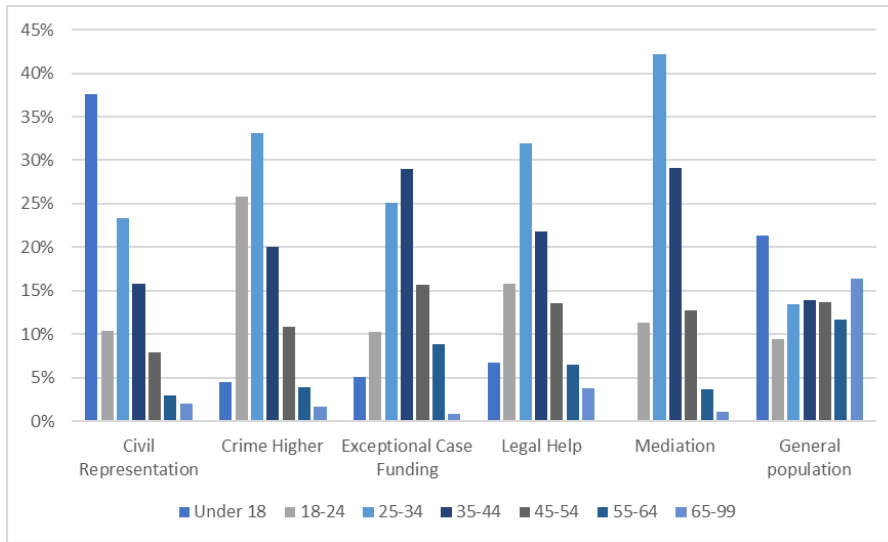
Age

As Figure 4 shows, a much greater proportion of clients of criminal legal aid (79%) are from young adult age groups (aged 18–44) than in the general population, which reflects the pattern across the criminal justice system as a whole. The overall age profile of clients in 2018–19 was similar to that in 2017–18.

⁵⁷ MoJ, Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2019>

⁵⁸ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>

Figure 4: Proportion of legal aid clients in 2018–19 by age band, compared to the general population^{59,60}



⁵⁹ MoJ, Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2019>

⁶⁰ Based on population between 16–64, so working age population. ONS Census data available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>



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