



Ministry
of Justice

Equalities assessment

Legal aid Means Test Review

March 2022

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Introduction

1. The Public Sector Equality Duty (PSED), as set out in section 149 of the Equality Act 2010, requires the Government to have due regard to the need to:
 - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2. This equalities assessment sets out the impact of our proposed changes on people with particular protected characteristics. Under our proposals, most people will be positively affected overall – i.e., they will become eligible for legal aid where they were not previously, or they will move from having to pay a contribution towards their legal costs to not having to pay a contribution. We describe these individuals as benefiting from our proposals. A minority of individuals will be negatively affected – i.e. they will move from being eligible for non-contributory legal aid to being required to pay an income or capital contribution, or from being eligible for legal aid to being ineligible. We describe these individuals as being detrimentally affected by our proposals. We do not include the effects of changes to the amount a person is required to contribute among those who remain eligible for contributory legal aid. As a result, it is likely that we are underestimating the number of people who have a beneficial outcome, but we want to be proportionate in our consideration of the impacts of these changes by capturing only those who see a significant change to their outcome, rather than include those who see smaller changes.
3. The transitional arrangements we have adopted (see Chapter 8 of the consultation) will enable existing legal aid recipients to benefit from our proposals, via reassessment. They will also protect existing civil legal aid recipients who apply for reassessment from any detrimental impact of the proposals on passporting and the pensioners disregard.
4. We have set out the impact of the proposals for civil legal aid and criminal legal aid separately, as the proposals differ in some cases and the characteristics of civil and criminal legal aid recipients vary. We have also looked at the overall impact of the changes to each scheme, rather than assessing the equalities impact for each individual policy proposal, because this provides an assessment of how the proposals will affect applicants in the round, which is how they will experience the means test. For example, they may benefit from one policy proposal and be negatively affected by another, and assessing the impact as a whole allows us to capture the overall change to their eligibility.

Civil legal aid

Data and methodology

5. For detailed information regarding the analytical methodology and assumptions, please refer to the Impact Assessment for civil legal aid.
6. The equalities analysis captures the changes to the core civil representation and legal help means tests. These include nearly all the changes to the income, capital, contributions and passporting rules. The analysis does not capture the bespoke

changes to the means test for immigration and asylum cases and the removal of the means test for some specific areas. The costings for these proposals suggest that the changes would affect a relatively small number of people, but we have set out what we consider is the likely impact of these proposals below. It is also not possible to use our modelling to estimate the equalities impacts of some components to the means test. This occurs where the Family Resources Survey, which is the basis for our modelling, does not contain the relevant data so we cannot identify affected households. This is likely to result in an underestimation of the number of those that benefit, since we cannot identify which people will benefit from these expansive policy components. As most of these proposals would widen access to legal aid, in most cases we have not overlooked any negative impact, but some groups would be more likely to benefit than our modelling suggests. In these cases, we have used other data sources to assess the equalities impact. Our assessment of the impact of the relevant proposals is as follows:

- a) **Priority debt:** Those most likely to be in debt are 1) aged between 25 and 39 (StepChange Debt Charity), with this group making up 45% of newly indebted adults compared to 25% in the population, and 2) families where the head of household was in their twenties (more than a third of whom were in arrears)¹. We therefore anticipate that these age groups would be likely to see the most benefit from our changes. According to research carried out by the Department of Work and Pensions (DWP), arrears on household bills declined gradually across the age groups but arrears in consumer credit fell much more quickly with increasing age, suggesting over-40s are less likely to benefit. With regard to sex, the majority of StepChange clients seeking debt advice in 2021 were female (63% in November 2021) and young (59% under the age of 40).² This does not mean that young women would necessarily benefit more, as men are more likely to require criminal legal aid (86% of Crown Court legal aid recipients being men), but women are likely to benefit for civil representation, where they make up 61% of recipients currently.³
- b) **Contested assets:** We expect that our proposal to disregard contested assets would disproportionately benefit victims of domestic abuse, as private family law cases where there is domestic abuse are one of relatively few cases in scope of legal aid where individuals can contest assets. As victims of domestic abuse are more likely to be female, this proposal would also mean women are more likely to benefit from our proposals than the tables below suggest.
- c) **Inaccessible capital:** We are asking for opinions on an option to make the existing disregard for inaccessible capital mandatory and introduce a charging system on such assets. Based on information from stakeholders about inaccessible capital, we expect this to mainly affect victims of domestic abuse, who may find it difficult to access a property they own with their abuser. As victims of domestic abuse are more likely to be female, this proposal would mean women are more likely to be affected by this proposal than the tables below suggest. This may have both a positive and detrimental effect: making the disregard mandatory may mean it is applied in more cases, but applicants may also be required to contribute to their legal costs via a charge, which is not currently the case where the Director of Legal Aid Case work exercises their discretion around inaccessible capital.

¹ [185SUMM \(bristol.ac.uk\)](#), [pfrc0402.pdf \(bristol.ac.uk\)](#)

² [PowerPoint Presentation \(themoneycharity.org.uk\)](#)

³ [Legal aid statistics: July to September 2021 - GOV.UK \(www.gov.uk\)](#)

- d) **Disregards for compensation, ex-gratia, damages payments and backdated benefits and backdated child maintenance:** We cannot identify the circumstances of the individuals who will have some of their income or capital disregarded. In addition, some proposals are future proofing against similar natured compensation schemes, ex-gratia and damages payments; we do not know the scope or size of such payments.
- e) **Immigration and asylum cases:** Existing recipients of legal aid for immigration and asylum cases are much more likely to have an ethnic minority background, with 74% of applicants being from an ethnic minority compared to the 11% in the wider population who are of Asian or Asian British; black, black British, Caribbean or African; mixed or multiple ethnicity; or other ethnicity.⁴ Existing recipients are also more likely to be male. Therefore, individuals who are male or from an ethnic minority would be more likely to benefit from our proposals than the tables below suggest. They would also be more likely to face an adverse cost impact on our proposal to introduce contributions for all immigration and asylum proceedings.
- f) **Non-means tested civil representation for under-18s:** This proposal means those under-18 would be more likely to benefit from our proposals than the tables below suggest. This policy constitutes more favourable treatment on the basis of age. However, we consider that this difference in treatment is not discrimination as it can be justified as a means to achieve a legitimate aim – to increase eligibility for legal aid (civil representation, ECF representation and criminal advice and assistance) for under-18s in order to improve administrative efficiency and support children who need representation at court. We believe we are additionally justified in differentiating under-18s from other age groups as these individuals are legally children as defined in domestic and international legislation. Moreover, given that the law now requires all young people in England to continue in education or training until at least their 18th birthday⁵ (in Wales the age is 16), they are unlikely to be working full time and it is therefore very unlikely that an under-18 will have sufficient income or capital to fail our proposed new civil means test.
- g) **Removing the means test for the withdrawal or withholding of lifesaving treatment for children:** These proposals risk indirect discrimination by association on the basis of age, as the policy limits means-free legal aid to the parents of children under 18. We estimate that those most likely to have children under 18 are aged 20-50, but we are unable to estimate the characteristics of these recipients. The policy would be likely to affect about 5 cases per year. Despite this potential for indirect discrimination, we consider that the policy is a proportionate means of achieving a legitimate aim because of the specific and unique needs of parents whose children are at risk of having life-sustaining treatment withdrawn or withheld and is therefore not unlawful under section 13(1) and (2) of the Equality Act 2010.
- h) **Non-means testing legal help at inquests in cases relating to a potential breach of Human Rights Act (HRA) Article 2 rights or where there is a significant wider public interest (WPI) in the holding of the inquest.** Currently, those most likely to receive legal aid for civil legal help at inquests

⁴ Data from published legal aid statistics for 2020-2021, <https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2021>

⁵ [Update to Participation Statutory Guidance FINAL \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614444/Update_to_Participation_Statutory_Guidance_FINAL.pdf)

are female (74% of recipients in 2019-2020). We therefore expect most beneficiaries from this change to be female.

7. The equalities assessment uses the Ministry of Justice's analytical models which are based on the England and Wales adult population as a whole and individuals' financial circumstances. As part of our equalities analysis, we have identified data on the protected characteristics of disability, sex, sexual identity, ethnicity, age and religion from the population in England and Wales. We have also looked at data on current recipients of legal aid to assess how likely individuals are to take up legal aid. Therefore, we have provided the impact both at a population level and at a legal aid volume level. In some cases, the impact is different for population eligibility compared with legal aid take-up. This is because the latter takes into account how likely the protected group is to take up legal aid, and we consider this to be the more reliable measure of impact.
8. Unless otherwise stated, the impact on volumes is rounded to the nearest 1,000. The percentages in tables may not sum to 100% because they are rounded to the nearest percentage.
9. We have not been able to identify data on the following characteristics of individuals who take up civil legal aid, as this is not published:
 - a) Gender Reassignment
 - b) Pregnancy and Maternity

We are, therefore, unable to currently undertake a quantitative assessment of the equalities impacts on these groups. None of these groups would be directly discriminated against as a result of our proposals, because the proposals would not treat anyone with these protected characteristics less favourably because of their protected characteristic. If the proposals were to result in any indirect discrimination, we consider this would be justified by the wider policy aims of the changes through the provision of fairer outcomes for legal aid applicants when comparing those in receipt of benefits to those not in receipt of benefits and treating people consistently based on their means, which is the purpose of the means test.

10. We have asked for more information on the impact on these groups in the consultation on our proposals and will consider any further evidence of equalities impact from the responses.

Baselines used to assess the impact of our policies

11. Assessing the impact of our proposals is very dependent on the baseline we use – i.e. who we assume is eligible for legal aid at present. This is complicated by our existing policy of passporting Universal Credit (UC) recipients because UC is not yet fully rolled out, so as more people continue to be rolled onto UC, more people become eligible for legal aid. Legal aid eligibility is therefore constantly changing.
12. In 2013 we introduced a policy of passporting all UC recipients through the income assessment as an interim measure until a new scheme for passporting UC recipients could be devised. However, this interim measure has become a longer-term position where many more claimants have moved onto UC. This includes those in work who would have been in receipt of housing benefit or tax credits and would not have previously been income passported for legal aid purposes.

13. This is important to note when setting a baseline because the current benefits system is in transition, moving the recipients of legacy benefits onto UC. It is therefore difficult to set a fixed current baseline for the Means Test Review because the impact of passporting all recipients on UC (our current policy) is changing constantly.
14. As such, we have estimated eligibility against two baselines using population data based on 22/23 forecast financials. The first baseline is based on the legacy system of benefits and the second one assumes that UC is fully rolled out to everyone. The following summary should make this clear:
 - a. **Baseline 1:** Assumes that all benefit recipients are still on their legacy benefit, and we therefore passport those who are entitled to income-based Job Seekers Allowance (JSA), income-based Employment and Support Allowance (ESA), Income Support (IS) and the Guarantee element of Pension Credit.
 - b. **Baseline 2:** Assumes that all legacy benefit recipients are transitioned to UC (including legacy recipients of in-work benefits such as tax credits), and that all of these recipients are passported through the income test.
15. The first of these baselines demonstrates the 'benefit' to the population of the changes proposed to the legal aid means assessment, against our pre-UC position; the second of these baselines demonstrates the benefit of changes to the means test from a position where all individuals have been transitioned to UC.
16. As in reality our baseline is somewhere between these two states, the analysis against a legacy baseline (Baseline 1) will overestimate the number of those benefitting whereas assessing the impacts against a UC baseline (Baseline 2) will underestimate the number of those benefitting.

Eliminating discrimination, harassment and victimisation

17. We do not consider that our proposals would result in direct discrimination, as none of the proposals would treat anyone with a protected characteristic less favourably because of their protected characteristic.
18. In respect of indirect discrimination, the policy proposals are considered likely to disadvantage some groups of individuals with protected characteristics more than others. The affected groups depend on which baseline is used to assess the impact, and we have set out the differing impacts in the sections below. In reality, the impact will be somewhere between these two assessments. We acknowledge that the impact could amount to indirect discrimination in so far as it puts groups with protected characteristics at a particular disadvantage. However, we consider that if this does amount to indirect discrimination, this is justified by the wider policy aims, in that they provide fairer outcomes for legal aid applicants when comparing those in receipt of benefits to those not in receipt of benefits and treat people consistently based on their means, which is the purpose of the means test. Our policies remain a proportionate means of achieving these wider policy aims whilst ensuring access to justice by providing legal aid to those who most need it.

Assessment against a baseline of the legacy passporting arrangements (Baseline 1)

19. In this section we assess the impact of the proposed policies against the current means test, but with our legacy passporting arrangements – i.e., the passporting arrangements before the introduction of UC. To show the impact of the proposed policies, we have applied the new income and capital thresholds and a passporting earnings threshold of £500 per month for UC recipients applying for civil legal aid.
20. This baseline may overestimate the positive impact of our proposals as it does not account for the fact that some UC recipients who would not have been passported under the legacy system are currently being passported, but will not be under our proposals.
21. The population eligibility tables show the percentages of a particular cohort (e.g. males) that are estimated to benefit from or be detrimentally impacted by the proposals. The tables on legal aid cases show the percentage of those who are impacted by the proposals who fall into a particular cohort (such that columns add to 100%). For example, in table 1, we estimate that 12% of white individuals in the population would benefit from our proposals, compared to table 2 showing that 79% of individuals who we estimate would benefit are white.
22. Since our tables on legal aid cases show the proportion of people who are affected by characteristic, it is important to provide context to the overall volumes. The number of clients that we estimate would benefit against this baseline is 13,000 for civil representation and 39,000 for legal help. No clients would experience an adverse impact for either civil representation or legal help.
23. Overall, 12% of the population would benefit from our proposals, while 0% are estimated to be detrimentally affected.
24. In relation to **race**, we have used ethnicity as a proxy. At a population level we estimate that individuals from ethnic minorities would be overrepresented as those that benefit from our proposals, particularly those who are of other ethnicity (25% will benefit compared to 12% of the whole population), Asian or Asian British individuals (20% will benefit) and black, black British, Caribbean or African individuals (19% will benefit). White adults are not disproportionately likely to be affected by our proposals.

Table 1: Population eligibility impacts by ethnicity

Ethnicity	Benefit	Detriment	No change
White	12%	0%	88%
Mixed/multiple ethnic groups	15%	0%	85%
Asian/Asian British	20%	0%	80%
Black/black British/Caribbean/ African	19%	0%	81%
Other ethnic group	25%	0%	75%
Total	12%	0%	88%

25. When we look at what the impact would be in terms of take up of legal aid, individuals from ethnic minority groups would be more likely to benefit compared to their representation in the population. Asian or Asian British individuals would be particularly likely to be overrepresented as those that benefit for both civil representation (11% of

all those that benefit compared to 6% of adults in the population) and legal help (13% of all beneficiaries compared to 6% of adults in the population).

Table 2: Civil representation cases where eligibility status changes, by ethnicity

Ethnicity	Benefit
White	79%
Mixed/multiple ethnic groups	2%
Asian/Asian British	11%
Black/black British/Caribbean/ African	6%
Other ethnic group	2%
Total	100%

Table 3: Legal help cases where eligibility status changes, by ethnicity

Ethnicity	Benefit
White	78%
Mixed/multiple ethnic groups	3%
Asian/Asian British	13%
Black/black British/Caribbean/ African	5%
Other ethnic group	3%
Total	100%

26. In relation to **sex**, there is only a marginal difference in the percentage of men and women estimated to benefit, with 14% of women and 11% of men in the population benefitting. Women are therefore slightly more likely to benefit from our proposals.

Table 4: Population eligibility impacts by sex

Sex	Benefit	Detriment	No change
Male	11%	0%	89%
Female	14%	0%	86%
Total	12%	0%	88%

27. When we look at what the impact would be in terms of take up of legal aid, women would be significantly more likely to benefit from our proposals for civil representation, making up 72% of beneficiaries compared to 51% of the adult population. We also expect that our proposal to disregard contested assets would disproportionately benefit victims of domestic abuse, as set out in paragraph 6b. As victims of domestic abuse are more likely to be female, this proposal would also mean women would be more likely to benefit from our proposals.⁶ For legal help, the expected impact would be split

⁶ *Domestic abuse victim characteristics, England and Wales: year ending March 2019*, <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2019#sex>

more equally amongst male and females (52% of those that benefit are estimated to be male and 48% female).

Table 5: Civil representation cases where eligibility status changes, by sex

Sex	Benefit
Male	28%
Female	72%
Total	100%

Table 6: Legal help cases where eligibility status changes, by sex

Sex	Benefit
Male	52%
Female	48%
Total	100%

28. In relation to **disability**, we have used the Family Resources Survey recording of disability (based on the core definition of disability in the Equality Act 2010). Table 7 shows that those who are disabled are not disproportionately affected by our proposals, with 13% of those that are disabled benefitting, which is in line with the proportion of those who are not disabled.

Table 7: Population eligibility impacts by disability

Disability	Benefit	Detriment	No change
Yes	13%	0%	87%
No	12%	0%	88%
Total	12%	0%	88%

29. When we look at what the impact would be in terms of take up of legal aid, for civil representation 28% of the beneficiaries are estimated to be disabled compared to the wider population estimate of 27%. Disabled people would be less likely to benefit from our proposals for legal help, with 20% of beneficiaries being disabled.

Table 8: Civil representation cases where eligibility status changes, by disability

Disability?	Benefit
Yes	28%
No	72%
Total	100%

Table 9: Legal help cases where eligibility status changes, by disability

Disability?	Benefit
Yes	20%
No	80%

Total	100%
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30. In relation to **age**, our proposals are more likely to benefit adults in the population who are younger, with 17% of 16-30 year olds benefitting. This tapers with age until the oldest group, those aged 60 and over, only 9% of whom would benefit. This is likely to be driven by the proportion of each cohort that has below the median level of income, since older workers are more likely to have higher earnings than younger workers, up until retirement age.⁷ Older people are also more likely to own their house outright, so they may be more likely to fail the capital test.⁸

Table 10: Population eligibility impact by age

Age band	Benefit	Detriment	No change
16-30	17%	0%	83%
31-40	16%	0%	84%
41-50	14%	0%	86%
51-59	10%	0%	90%
60+	9%	0%	91%
Total	12%	0%	88%

31. When we look at what the impact would be in terms of take up of legal aid, despite more 16-30 year olds benefitting at a population level, those aged 31-50 would be more likely to benefit in practice (60% of those that benefit compared to 33% of adults in the population). This is because they are more likely to require legal aid for civil representation. This is also the case with legal help, mediation and telephone cases, especially for those aged 31-40 (36% of those that benefit compared to 17% of adults in the population). For both civil representation and legal help, relatively few of the older population (over 50s) benefit, with only 6% of those that benefit falling within this cohort compared to 30% of adults in the total population.

Table 11: Civil representation cases where eligibility status changes, by age

Age Band	Benefit
16-30	20%
31-40	32%
41-50	28%
51-59	13%
60+	6%
Total	100%

Table 12: Legal help cases where eligibility status changes, by age

⁷ *Earnings and hours worked, age group: ASHE Table 6*, Office for National Statistics, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/agegroupashtable6>, Table 6.7a

⁸ <https://www.ethnicity-facts-figures.service.gov.uk/housing/owning-and-renting/home-ownership/latest#by-ethnicity-and-age-group>

Age Band	Benefit
16-30	25%
31-40	36%
41-50	23%
51-59	10%
60+	6%
Total	100%

32. In relation to **sexual identity**, people of Other sexuality are likely to disproportionately benefit from our proposals, while those who are Gay/lesbian are least likely to benefit. However, a large proportion of the population refused to disclose their sexual identity so we cannot draw firm conclusions from this data.

Table 13: Population eligibility impacts by sexual identity

Sexual Identity	Benefit	Detriment	No change
Heterosexual/Straight	13%	0%	87%
Gay/lesbian	7%	0%	93%
Bisexual	13%	0%	87%
Other	18%	0%	82%
Refuse to say	16%	0%	84%
Total	12%	0%	88%

33. When we look at take up of legal aid, heterosexual individuals would be slightly underrepresented as benefitting from the proposals, making up 69% of additional volumes for legal help compared to 74% of the population. However, as with the population data, a large proportion of the population refused to disclose their sexual identity so we cannot draw firm conclusions from this data.

Table 14: Civil representation cases where eligibility status changes, by sexual identity

Sexual Identity	Benefit
Heterosexual/Straight	75%
Gay/lesbian	1%
Bisexual	0%
Other	1%
Refuse to say	23%
Total	100%

Table 15: Legal help cases where eligibility status changes, by sexual identity

Sexual Identity	Benefit
Heterosexual/Straight	69%
Gay/lesbian	0%

Bisexual	1%
Other	1%
Refuse to say	29%
Total	100%

34. In relation to religion, the population data suggests the individuals that would benefit the most from the changes are either Muslim or Sikh, with 24% estimated to benefit. Those with no religion or of Christian faith would be least likely to benefit from the changes (12% of each are estimated to benefit).

Table 16: Population eligibility impacts by religion

Religion	Benefit	Detriment	No change
No religion	12%	0%	88%
Christian	12%	0%	88%
Buddhist	15%	0%	85%
Hindu	14%	0%	86%
Jewish	16%	0%	84%
Muslim	24%	0%	76%
Sikh	24%	0%	76%
Other or unknown	16%	0%	84%
Total	12%	0%	88%

35. As per the population data, the data on take up of legal aid suggests that Muslims would be most likely to benefit from the changes since they make up 9% of all those that benefit for civil representation and 8% of all those that benefit for legal help, compared to only 4% of the population. Those of Christian faith would be the least likely to benefit, since they make up only 53% (civil rep) and 52% (legal help) of those that benefit, compared to 60% of the population.

Table 17: Civil representation cases where eligibility status changes, by religion

Religion	Benefit
No religion	32%
Christian	53%
Buddhist	2%
Hindu	2%
Jewish	0%
Muslim	9%
Sikh	1%
Other or unknown	2%
Total	100%

Table 18: Legal help cases where eligibility status changes, by religion

Religion	Benefit
No religion	34%
Christian	52%
Buddhist	1%
Hindu	2%
Jewish	0%
Muslim	8%
Sikh	1%
Other or unknown	1%
Total	100%

Assessment against a baseline of passporting all UC recipients (Baseline 2)

36. In this section we assess the impact of the policies against a baseline where all recipients of UC are passported, and where the means test income thresholds are the ones currently in place. This reflects our current interim policy. To show the impact of the proposed policies, we have applied the new income and capital thresholds and a passporting earnings threshold of £500 per month for UC recipients applying for civil legal aid.
37. This baseline overstates the negative impact of our proposals because it assumes that UC is fully rolled out and all UC recipients are passported, but only 63% of individuals have been moved onto UC (as of January 2022).⁹ This is significant because UC recipients may be detrimentally affected by our proposal to introduce a £500 earnings threshold for UC passporting, whereas recipients of legacy benefits will not be.
38. For context, the number of clients that we estimate would benefit against this baseline is 6,000 for civil representation and 25,000 for legal help, and the number of clients we estimate would experience a detrimental impact is 10,000 for civil representation and 12,000 for legal help.
39. Overall, 8% of the population are estimated to benefit from our proposals while 5% are estimated to experience a detrimental impact.
40. In relation to **race**, we have used ethnicity as a proxy. At a population level we estimate that black, African, Caribbean or black British individuals are underrepresented as those who benefit overall from our proposals: 9% of these individuals are estimated to benefit at a population level, but 14% are estimated to have a detrimental outcome, resulting in a net detrimental effect of 5% for this group. All other ethnic groups have a net benefit.

Table 19: Population eligibility impacts by ethnicity

Ethnicity	Benefit	Detriment	No change
White	8%	4%	88%

⁹ <https://commonslibrary.parliament.uk/constituency-data-universal-credit-roll-out/>, accessed 04/01/2022

Mixed/multiple ethnic groups	10%	6%	84%
Asian/Asian British	11%	9%	80%
Black/black British/Caribbean/ African	9%	14%	77%
Other ethnic group	14%	8%	78%
Total	8%	5%	87%

41. When we look at what the impact would be in terms of take up of legal aid, similar conclusions apply, but individuals from most ethnic minority groups (other than those of Mixed ethnicity for legal help cases) would be more likely to be affected by the changes - both positively and negatively - compared to their representation in the population.

Table 20: Civil representation cases where eligibility status changes, by ethnicity

Ethnicity	Benefit	Detriment
White	82%	79%
Mixed/multiple ethnic groups	2%	2%
Asian/Asian British	10%	10%
Black/black British/Caribbean/ African	5%	7%
Other ethnic group	2%	2%
Total	100%	100%

Table 21: Legal help cases where eligibility status changes, by ethnicity

Ethnicity	Benefit	Detriment
White	80%	79%
Mixed/multiple ethnic groups	0%	1%
Asian/Asian British	12%	15%
Black/black British/Caribbean/ African	4%	3%
Other ethnic group	4%	2%
Total	100%	100%

42. In relation to **sex**, there are a similar proportion of male and females expected to benefit from the proposals (8% males and 9% females), but a slightly larger percentage of women are estimated to have a detrimental outcome (6% versus 4%).

Table 22: Population eligibility impacts by sex

Sex	Benefit	Detriment	No change
Male	8%	4%	88%
Female	9%	6%	85%
Total	8%	5%	87%

43. When we look at what the impact would be in terms of take up of legal aid, women would be more likely to be detrimentally affected by our proposals than men, and less

likely to benefit. However, we expect that our proposal to disregard contested assets would disproportionately benefit victims of domestic abuse, who are more likely to be female. Nonetheless, we expect that overall women would be disproportionately more likely to be detrimentally affected by our proposals.

Table 23: Civil representation cases where eligibility status changes, by sex

Sex	Benefit	Detriment
Male	33%	19%
Female	67%	81%
Total	100%	100%

Table 24: Legal help cases where eligibility status changes, by sex

Sex	Benefit	Detriment
Male	56%	43%
Female	44%	57%
Total	100%	100%

44. In relation to **disability**, we have used the Family Resources Survey recording of disability (based on the core definition of disability in the Equality Act 2010). Table 25 shows that there is a net benefit of 5% for those who are disabled compared to a net benefit of 3% for those who are not disabled, so our proposals are slightly more likely to benefit those who are disabled compared to those who are not.

Table 25: Population eligibility impacts by disability

Disability	Benefit	Detriment	No change
Yes	9%	4%	87%
No	8%	5%	87%
Total	8%	5%	87%

45. When we look at what the impact would be in terms of take up of legal aid, the conclusions are similar: the proportion of additional case volumes for civil representation (27%) and legal help (22%) which come from people who are disabled are broadly in line with the proportion of the population which is disabled (27%). The same is true of cases where people would be detrimentally affected (24%).

Table 26: Civil representation cases where eligibility status changes, by disability

Disability	Benefit	Detriment
Yes	27%	24%
No	73%	76%
Total	100%	100%

Table 27: Legal help cases where eligibility status changes, by disability

Disability	Benefit	Detriment
Yes	22%	24%
No	78%	76%
Total	100%	100%

46. In relation to **sexual identity**, people of other sexuality are likely to disproportionately benefit from our proposals, while those who are gay/lesbian or heterosexual are least likely to benefit at a population level. However, a large proportion of the population refused to disclose their sexual identity so we cannot draw firm conclusions from this data.

Table 28: Population eligibility impacts by sexual identity

Sexual Identity	Benefit	Detriment	No change
Heterosexual/Straight	8%	5%	87%
Gay/lesbian	7%	14%	79%
Bisexual	11%	5%	84%
Other	16%	0%	84%
Refuse to say	15%	2%	83%
Total	8%	5%	87%

47. When we look at take up of legal aid, heterosexual individuals would be underrepresented among those benefitting from the proposals, making up 64% of additional civil representation volumes and 66% for legal help, compared to 74% of the population. They would also be overrepresented as those detrimentally affected. However, as with the population data, a large proportion of the population refused to disclose their sexual identity so we cannot draw firm conclusions from this data.

Table 29: Civil representation cases where eligibility status changes, by sexual identity

Sexual Identity	Benefit	Detriment
Heterosexual/Straight	64%	84%
Gay/lesbian	1%	2%
Bisexual	1%	0%
Other	1%	0%
Refuse to say	34%	14%
Total	100%	100%

Table 30: Legal help cases where eligibility status changes, by sexual identity

Sexual Identity	Benefit	Detriment
Heterosexual/Straight	66%	76%
Gay/lesbian	1%	0%
Bisexual	1%	1%

Other	1%	0%
Refuse to say	32%	23%
Total	100%	100%

48. In relation to **age**, our proposals are less likely to have a detrimental impact on those who are aged over 50 (2% of 51-59 year olds experience a negative impact and 0% of 60+ year olds). This is probably due to the low proportion of them that take up UC or are eligible for UC. Those who are aged 16-30 are estimated to have a net positive impact of around 5%, whereas those between 31-40 are most likely to be detrimentally affected with a net negative impact of 5%.

Table 31: Population eligibility impact by age

Age Band	Benefit	Detriment	No change
16-30	12%	7%	79%
31-40	8%	12%	80%
41-50	6%	7%	87%
51-59	7%	2%	91%
60+	8%	0%	92%
Total	8%	5%	87%

49. When we look at what the impact would be in terms of take up of legal aid, those in the 31-40 age group would remain the most likely to be detrimentally affected by our proposals for civil representation (47%) and legal help (55%) compared to their representation in the adult population (17%).

Table 32: Civil representation cases where eligibility status changes, by age

Age Band	Benefit	Detriment
16-30	26%	22%
31-40	26%	47%
41-50	23%	27%
51-59	15%	4%
60+	11%	1%
Total	100%	100%

Table 33: Legal help cases where eligibility status changes, by age

Age Band	Benefit	Detriment
16-30	28%	18%
31-40	28%	55%
41-50	20%	18%
51-59	12%	9%
60+	12%	0%

Total	100%	100%
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50. In relation to religion, the population data suggests the individuals that would benefit the most from the changes are Sikh (17% are estimated to benefit) or of Jewish faith (16% estimated to benefit). Muslims would be most likely to have a detrimental outcome (14%).

Table 34: Population eligibility impact by religion

Religion	Benefit	Detriment	No change
No religion	7%	6%	87%
Christian	9%	4%	87%
Buddhist	10%	2%	88%
Hindu	10%	6%	84%
Jewish	16%	4%	80%
Muslim	10%	14%	76%
Sikh	17%	1%	82%
Other religion or unknown	9%	5%	86%
Total	8%	5%	87%

51. When we look at take up of legal aid, Muslims would be the most likely to be affected by the changes since they make up 7% of all those that benefit for civil representation and 6% of all those that benefit for legal help, compared to only 4% of the population. Of those who have a detrimental impact, Muslims make up 9% of civil representation volumes and 12% of legal help. Those of Christian faith would be underrepresented among those that have a detrimental impact for civil representation (48%) and legal help (47%), given that they make up 60% of adults in the population. Those of no religion are disproportionately likely to be detrimentally affected, making up 39% of this group compared to 32% of the wider population.

Table 35: Civil representation cases where eligibility status changes, by religion

Religion	Benefit	Detriment
No religion	27%	39%
Christian	60%	48%
Buddhist	1%	0%
Hindu	2%	2%
Jewish	1%	0%
Muslim	7%	9%
Sikh	1%	0%
Other religion or unknown	1%	1%
Total	100%	100%

Table 36: Legal help cases where eligibility status changes, by religion

Religion	Benefit	Detriment
No religion	31%	38%
Christian	56%	47%
Buddhist	1%	0%
Hindu	2%	1%
Jewish	1%	1%
Muslim	6%	12%
Sikh	2%	0%
Other religion or unknown	1%	0%
Total	100%	100%

Advancing equality of opportunity

52. Our proposals would benefit more people at a population level than those who would be detrimentally affected. This is the case under both the baselines we used – please see the Impact Assessment for civil legal aid for more details. Our other proposals, such as widening the types of case where there is no means test, will further increase legal aid eligibility. Where appropriate, we have also developed policies with specific cohorts in mind – such as domestic abuse victims, or those aged under 18. In relation to how the proposals affect protected groups, this depends on which baseline is used to assess the impact, and we have set out the differing impacts in the sections above. In reality, the impact will be somewhere between these two assessments.
53. Some protected groups would be more likely to be detrimentally affected, as outlined in the section above, predominantly due to the changes to passporting. We consider this is fair because our proposals would create more parity between those in receipt of benefits and those who are not on benefits but are on low incomes, by ensuring that individuals on benefits are only passported where it is very likely they would be eligible for non-contributory legal aid. We consider that our proposals would advance equality of opportunity by significantly widening access to legal aid for people on low incomes.

Fostering good relations

54. We do not anticipate that the policy would have a particular impact on fostering good relations between those who do and do not share a protected characteristic.

Criminal legal aid

Data and methodology

55. In modelling the impact of these policies, we have used a baseline where all recipients of Universal Credit are passported, and where the means test income thresholds are the ones currently in place (Baseline 2). This reflects our current interim policy on passporting, and we are proposing to retain this policy. To show the impact of the proposed policies, we have applied the new income and capital thresholds.
56. Using Baseline 2 underestimates the number of people who benefit from our proposals, as UC is not fully rolled out at present, so as people move from non-passported legacy benefits onto UC they will benefit from our proposal to passport all UC recipients through the income assessment. We have used this baseline despite this as it is our current policy and we are not proposing to change it for criminal legal aid, so it clearly demonstrates the impact of our other proposed policies.
57. This assessment uses our analytical model which is based on the England and Wales adult population as a whole and looks at individuals' financial circumstances. We have also looked at data on current recipients of legal aid to assess how likely individuals are to take up legal aid. Therefore, we have provided both the impact at a population level and a legal aid volume level. In some cases, the impact is different for population eligibility compared with legal aid take-up. This is because the latter takes into account how likely the protected group is to take up legal aid, and we consider the latter is the more reliable measure of impact.
58. The population eligibility tables show the percentages of a particular cohort (e.g. males) that are estimated to benefit from or be detrimentally impacted by the proposals. The tables on legal aid cases show the percentages of those individuals who are impacted by the proposals who fall into a particular cohort (such that columns add to 100%). For example, in table 37, we estimate 24% of white individuals in the population would benefit from our proposals, compared to table 38 showing 85% of individuals estimated to benefit being white.
59. Unless otherwise stated, volumes impacts are rounded to the nearest 1,000. The percentages in tables may not sum to 100% because they are rounded to the nearest percentage.
60. We have not been able to identify data on the following characteristics of individuals who take up civil legal aid:
 - a) Gender Reassignment
 - b) Pregnancy and Maternity

We are, therefore, unable to currently undertake a quantitative assessment of the equalities impacts on these groups. None of these groups would be directly discriminated against as a result of our proposals, because the proposals would not treat anyone with a protected characteristic less favourably because of their protected characteristic. If the proposals do result in indirect discrimination, this is justified by the wider policy aims, in that they provide fairer outcomes for legal aid applicants when comparing those in receipt of benefits to those not in receipt of benefits and treat people consistently based on their means, which is the purpose of the means test. We have asked for more information on the impact on these groups in the consultation on our proposals.

Crown Court

Eliminating discrimination, harassment and victimisation

61. In relation to eliminating unlawful discrimination, harassment and victimisation, we do not consider that our proposals would result in direct discrimination, since the proposals will not treat anyone with a protected characteristic less favourably because of their protected characteristic.
62. In respect of indirect discrimination, our proposals have the potential to disadvantage some groups of individuals with protected characteristics more than others. Specifically, Asian or Asian British individuals, those with a disability, those aged 41-50, those of Other or heterosexual sexual identity and those who are Muslim are more likely to be disadvantaged by our proposals. This is very likely to be due to our changes to capital passporting arrangements for contributions payable in the Crown Court, where we will no longer passport those in receipt of passporting benefits who own property. We acknowledge that the impact could amount to indirect discrimination in so far as it puts groups with protected characteristics at a particular disadvantage. However, we consider that if this does amount to indirect discrimination, this is justified by the wider policy aims, in that they provide fairer outcomes for legal aid applicants when comparing those in receipt of benefits to those not in receipt of benefits. Our proposals treat people more consistently according to their means, which is the purpose of the means test. Our proposals are a proportionate means of achieving these wider policy aims whilst ensuring access to justice by providing legal aid to those who most need it.

Impact on groups with protected characteristics

63. Overall, we estimate that at a population level, 23% of individuals would benefit from our proposals and 4% would suffer a detrimental effect.
64. The population tables for the Crown Court are very likely to overestimate the actual number of people who benefit from the policy. This is because the removal of the £37.5k threshold will result in 20% of the adult population becoming eligible for Crown Court legal aid, but in practice, these individuals are very unlikely to require legal aid.
65. As explained in paragraph 58, the tables on legal aid cases show the breakdowns of those who would benefit or would have a detrimental impact, by using percentages. The number of clients that we estimate would benefit is around 2,000 and the number of clients we estimate would have a detrimental impact is around 3,000.
66. The detrimental impact is as a result of the proposed change to capital passporting, which would result in some income passported individuals having to pay a capital contribution because of the equity they have in their property, if they are convicted.
67. In relation to **race**, we have used ethnicity as a proxy. At a population level we estimate that Asian or Asian British individuals (net benefit of 4%), black, African, Caribbean or black British individuals (net benefit 8%), and individuals of mixed or multiple ethnic groups (net benefit 16%) would be underrepresented as those who benefit from our proposals, compared to the population as a whole (net benefit 19%). White individuals would be slightly more likely to benefit at a population level (net benefit 21%).

Table 37: Population eligibility impacts by ethnicity

Ethnicity	Benefit	Detriment	No Change
White	24%	3%	73%
Mixed/multiple ethnic groups	20%	4%	76%
Asian/Asian British	16%	12%	72%
Black/black British/Caribbean/ African	11%	3%	85%
Other ethnic group	22%	2%	76%
Total	23%	4%	77%

68. When we look at what the impact would be in terms of take up of Crown Court legal aid, Asian or Asian British individuals would be disproportionately more likely to be detrimentally affected by the proposals, making up 25% of those negatively affected compared to 6% of the population as a whole.

Table 38: Legal aid cases where eligibility status changes, by ethnicity

Ethnicity	Benefit	Detriment
White	85%	68%
Mixed/multiple ethnic groups	2%	5%
Asian/Asian British	6%	25%
Black/black British/Caribbean/ African	3%	2%
Other ethnic group	4%	0%
Total	100%	100%

69. In relation to **sex**, men would be slightly more likely to benefit from the proposals at population level, with a net benefit of 21% compared to 17% for women. This may partly be because men tend to earn more on average, so removing the upper disposable income threshold for legal aid eligibility in the Crown Court may benefit men more than women.¹⁰

Table 39: Population eligibility impacts by sex

Sex	Benefit	Detriment	No Change
Male	24%	3%	73%
Female	22%	5%	73%
Total	23%	4%	77%

70. When we look at what the impact would be in terms of take up of Crown Court legal aid, men would be disproportionately more likely to be both positively and negatively affected by the proposals. This is because they are much more likely to be charged with a crime.¹¹

¹⁰ Sex pay gap in the UK - Office for National Statistics (ons.gov.uk), <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/sexpaygap/intheuk/2021>

¹¹ <https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2019/women-and-the-criminal-justice-system-2019>, accessed 05/01/2022

Table 40: Legal aid cases where eligibility status changes, by sex

Sex	Benefit	Detriment
Male	90%	85%
Female	10%	15%
Total	100%	100%

71. In relation to **disability**, we have used the Family Resources Survey recording of disability (based on the core definition of disability in the Equality Act 2010). People who are disabled would be less likely to benefit from our proposals, with a net benefit of 8% compared to 24% for people who are not disabled. This may be because we would no longer passport individuals through the capital assessment in the Crown Court, which determines whether convicted defendants are required to pay a capital contribution. This proposal only affects those on UC, and it may be that individuals on UC are more likely to be disabled, though we do not have data on this.

Table 41: Population eligibility impacts by disability & non-disabled

Disability	Benefit	Detriment	No Change
Yes	14%	6%	81%
No	27%	3%	70%
Total	23%	4%	77%

72. When we look at what the impact would be in terms of take up of Crown Court legal aid, disabled people remain less likely to benefit from our proposals and would be more likely to be detrimentally affected, making up 50% of those detrimentally affected compared to 27% of the population.

Table 42: Legal aid cases where eligibility status changes, by disability

Disability	Benefit	Detriment
Yes	16%	50%
No	84%	50%
Total	100%	100%

73. In relation to **age**, our proposals would be more likely to benefit adults who are aged 31-59. Adults aged 41-50 would also be more likely to be detrimentally affected (7%). This is likely to be driven by the proportion of each cohort that has income below the median level of income, since older workers are more likely to have higher earnings than younger workers, up until retirement age.¹² Young adults aged 18-30 would be less likely to be positively or negatively affected by the proposals, possibly because they have lower earnings so are more likely to already be eligible for legal aid under the current means test.

Table 43: Population eligibility impact by age

¹² *Earnings and hours worked, age group: ASHE Table 6*, Office for National Statistics, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/agegroupashtable6>, Table 6.7a

Age Band	Benefit	Detriment	No Change
18-30	14%	1%	85%
31-40	26%	4%	70%
41-50	28%	7%	66%
51-59	32%	4%	64%
60+	20%	4%	76%
Total	23%	4%	77%

74. When we look at what the impact would be in terms of take up of Crown Court legal aid, young people aged 18-30 would be much more likely to benefit, making up 46% of beneficiaries compared to 19% of the population. This is because younger individuals are more likely to be involved in Crown Court proceedings. Those aged 41-50 would remain the most likely to be detrimentally affected, making up 38% of this group compared to 16% of the wider population.

Table 44: Legal aid cases where eligibility status changes, by age

Age Band	Benefit	Detriment
18-30	46%	9%
31-40	20%	27%
41-50	15%	38%
51-59	10%	15%
60+	10%	11%
Total	100%	100%

75. In relation to **sexual identity**, gay/lesbian individuals would be more likely to benefit from our proposals. Those of other sexual identity would be more likely to be detrimentally affected.

Table 45: Population eligibility impact by sexual identity

Sexual Identity	Benefit	Detriment	No Change
Heterosexual/Straight	23%	4%	73%
Gay/lesbian	30%	0%	70%
Bisexual	23%	3%	75%
Other	25%	10%	66%
Not disclosed	58%	8%	34%
Total	23%	4%	77%

76. When we look at what the impact would be in terms of take up of Crown Court legal aid, heterosexual people would be slightly more likely to be negatively affected by the proposals, making up 79% of this group compared to 74% of the wider population. Other groups would not be disproportionately affected. However, a large proportion of

respondents refused to disclose their sexual identity so these conclusions are not reliable.

Table 46: Legal aid cases where eligibility status changes, by sexual identity

Sexual Identity	Benefit	Detriment
Heterosexual/Straight	60%	79%
Gay/lesbian	1%	0%
Bisexual	0%	0%
Other	0%	1%
Not disclosed	34%	18%
Total	100%	100%

77. In relation to **religion**, at a population level, Jewish individuals would be most likely to benefit from our proposals (37% would benefit). Muslim and Sikh individuals would be most likely to be detrimentally impacted (15% and 12% respectively).

Table 47: Population eligibility impact by religion

Religion	Benefit	Detriment	No Change
No religion	25%	3%	72%
Christian	23%	3%	73%
Buddhist	15%	4%	81%
Hindu	24%	9%	68%
Jewish	37%	3%	61%
Muslim	8%	15%	77%
Sikh	21%	12%	66%
Any other religion or unknown	15%	3%	82%
Total	23%	4%	77%

78. When we look at take up of legal aid, individuals with no religion would be most likely to benefit from our proposals as they make up 32% of the population but 41% of those benefitting, however they are also slightly overrepresented as those who are detrimentally impacted (34%). Muslim individuals are overrepresented as those detrimentally impacted (21%) as Muslims represent 4% of the England and Wales population.

Table 48: Legal aid cases where eligibility status changes, by religion

Religion	Benefit	Detriment
No religion	41%	34%
Christian	52%	36%
Buddhist	0%	3%
Hindu	1%	2%
Jewish	0%	0%

Muslim	2%	21%
Sikh	2%	3%
Any other religion or unknown	2%	0%
Total	100%	100%

Advancing equality of opportunity

79. Our proposals would increase legal aid eligibility at a population level, though when we look at take up of legal aid, people would benefit in 2,000 cases but would be detrimentally affected in 3,000 cases due to the ending of passporting for capital contributions in the Crown Court. We consider that our proposals would advance equality of opportunity by significantly widening access to legal aid for people on low incomes. In terms of protected groups, men are much more likely to benefit from the proposals as they are more likely to be charged with a crime. Young adults aged 18-30 are also more likely to benefit, as are those with no religion. While some protected groups would be less likely to benefit, we consider this is fair because our proposed changes will create more parity between property owners in receipt of benefits and those who are not on benefits, by ensuring that individuals on benefits are only capital passported where it is very likely they would not have to pay a contribution if means assessed.

Fostering good relations

80. We do not anticipate that the policy would have a particular impact on relations between those who do and do not share a protected characteristic.

Magistrates' court

Eliminating discrimination, harassment and victimisation

81. In relation to eliminating unlawful discrimination, harassment and victimisation, we do not consider that our proposals would result in direct discrimination, since the proposals will not treat anyone with a protected characteristic less favourably because of their protected characteristic.

82. In respect of indirect discrimination, this policy proposal would only disadvantage 0.1% of the population. Some groups of individuals with protected characteristics would benefit from the proposal more or less than others. Specifically, those who are disabled would be less likely to benefit from the proposals. We acknowledge that the impact could amount to indirect discrimination in so far as it puts groups with protected characteristics at a particular disadvantage. However, we consider that if this does amount to indirect discrimination, this is justified by the wider policy aims, in that they provide fairer outcomes for legal aid applicants when comparing those in receipt of benefits to those not in receipt of benefits and treat people consistently based on their means, which is the purpose of the means test. Our proposed policy, as part of a wider package of means test reform measures, remains a proportionate means of achieving these wider policy aims whilst ensuring access to justice by providing legal aid to those who most need it.

Impact on groups with protected characteristics

83. Overall, only 0.1% of the population are detrimentally affected by our proposals whereas 7% would benefit. As a result, the estimates of how this would affect protected groups may be unreliable, due to the small numbers involved.
84. As explained in paragraph 58, the tables on legal aid cases show the proportion of those who would benefit or would experience a detrimental impact. For context, the number of people that we estimate would benefit is around 11,000 and the number of clients we estimate would have a detrimental impact is around 100. As a result of the low volume of those who would be detrimentally impacted, the percentages in the volumes table can be very misleading. We have not commented on the different proportions of those with a detrimental impact, but we have included them in the tables for reference.
85. The detrimental impact is as a result of the difference in the equivalisation metric which sees the weighted income of a small minority of individuals change. This occurs where the individual's weighted income was previously near but just under the gross threshold (therefore making them eligible) but under our proposals it would be calculated to be just over the new gross threshold, and also above the disposable income threshold.
86. In relation to **race**, we have used ethnicity as a proxy. At a population level we estimate that most ethnicities would not be affected disproportionately by our proposals, but individuals of Other ethnic groups would be overrepresented among those who benefit from our proposals.

Table 49: Population eligibility impacts by ethnicity

Ethnicity	Benefit	Detriment	No Change
White	7%	0%	93%
Mixed/multiple ethnic groups	8%	0%	92%
Asian/Asian British	7%	0%	93%
Black/black British/Caribbean/ African	6%	0%	94%
Other ethnic group	13%	0%	87%
Total	7%	0%	93%

87. When we look at what the impact would be in terms of take up of legal aid, white individuals would be slightly less likely to benefit, making up 86% of beneficiaries compared to 89% of the wider population.

Table 50: Legal aid cases where eligibility status changes, by ethnicity

Ethnicity	Benefit	Detriment
White	86%	97%
Mixed/multiple ethnic groups	2%	0%
Asian/Asian British	7%	3%
Black/black British/Caribbean/ African	2%	0%
Other ethnic group	3%	0%
Total	100%	100%

88. In relation to **sex**, women and men are estimated to be equally affected by the proposals at a population level.

Table 51: Population eligibility impacts by sex

Sex	Benefit	Detriment	No Change
Male	7%	0%	93%
Female	7%	0%	93%
Total	7%	0%	93%

89. When we look at what the impact would be in terms of take up of legal aid, men would be disproportionately more likely to be affected by the proposals. This is because they are much more likely to be charged with a crime.¹³

Table 52: Legal aid cases where eligibility status changes, by sex

Sex	Benefit	Detriment
Male	89%	86%
Female	11%	14%
Total	100%	100%

90. In relation to **disability**, we have used the Family Resources Survey recording of disability (based on the core definition of disability in the Equality Act 2010). People who are disabled would not be disproportionately affected by our proposals, compared to people who are not disabled.

Table 53: Population eligibility impacts by disability & non-disabled

Disability	Benefit	Detriment	No Change
Yes	7%	0%	93%
No	7%	0%	92%
Total	7%	0%	93%

91. When we look at what the impact would be in terms of take up of legal aid, disabled people would be less likely to benefit, making up 14% of beneficiaries compared to 27% of the wider population.

Table 54: Legal aid cases where eligibility status changes, by disability

Disability	Benefit	Detriment
Yes	14%	32%
No	86%	68%
Total	100%	100%

¹³ <https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2019/women-and-the-criminal-justice-system-2019>, accessed 05/01/2022

92. In relation to **age**, our proposals would be more likely to benefit younger adults aged 18-30, with 11% of this age group benefitting from our proposals compared to 7% of the population overall.

Table 55: Population eligibility impact by age

Age Band	Benefit	Detriment	No Change
18-30	11%	0%	89%
31-40	7%	0%	93%
41-50	6%	0%	94%
51-59	6%	0%	94%
60+	7%	1%	92%
Total	7%	0%	93%

93. When we look at what the impact would be in terms of take up of legal aid, the same conclusions apply: young people aged 18-30 would be most likely to benefit.

Table 56: Legal aid cases where eligibility status changes, by age

Age Band	Benefit	Detriment
18-30	45%	0%
31-40	17%	0%
41-50	25%	0%
51-59	8%	0%
60+	4%	100%
Total	100%	100%

94. In relation to **sexual identity**, those who are bisexual would be disproportionately likely to benefit from our proposals, with 11% of this group estimated to benefit compared to 7% overall. Those who are gay/lesbian would be disproportionately less likely to benefit (5%). These conclusions are less reliable because of the large proportion of respondents who refused to state their sexual identity.

Table 57: Population eligibility impact by sexual identity

Sexual Identity	Benefit	Detriment	No Change
Heterosexual/Straight	7%	0%	93%
Gay/lesbian	5%	0%	95%
Bisexual	11%	0%	89%
Other	10%	0%	90%
Not disclosed	30%	0%	70%
Total	7%	0%	93%

95. When we look at what the impact would be in terms of take up of legal aid, heterosexual people would be less likely to benefit compared to their representation in the population as a whole (74%).

Table 58: Legal aid cases where eligibility status changes, by sexual identity

Sexual Identity	Benefit	Detriment
Heterosexual/Straight	57%	88%
Gay/lesbian	1%	0%
Bisexual	0%	0%
Other	0%	0%
Not disclosed	41%	12%
Total	100%	100%

96. In relation to religion, at a population level, Buddhist and Sikh individuals would be most likely to benefit from our proposals (16% and 18% would benefit respectively) compared to 7% of the overall population.

Table 59: Population eligibility impact by religion

Religion	Benefit	Detriment	No Change
No religion	7%	0%	93%
Christian	7%	0%	92%
Buddhist	16%	0%	84%
Hindu	7%	0%	93%
Jewish	9%	0%	91%
Muslim	5%	0%	95%
Sikh	18%	0%	82%
Any other religion or unknown	6%	0%	94%
Total	7%	0%	93%

97. When we look at take up of legal aid, individuals with no religion would be most likely to benefit from our proposals as they make up 32% of our population but 44% of those benefitting.

Table 60: Legal aid cases where eligibility status changes, by religion

Religion	Benefit	Detriment
No religion	44%	19%
Christian	47%	78%
Buddhist	1%	0%
Hindu	1%	3%
Jewish	0%	0%
Muslim	4%	0%

Sikh	2%	0%
Any other religion or unknown	1%	0%
Total	100%	100%

Advancing equality of opportunity

98. Almost all individuals who are affected would benefit from our proposals. We consider that our proposals would advance equality of opportunity by significantly widening access to legal aid for people on low-to-middle incomes (i.e. up to an average income). Protected groups would benefit more where a greater proportion of the group is on a low-to-middle income, which supports equality of opportunity because it helps those on low-to-middle incomes to receive legal services when they might not otherwise be able to. This includes men, who are much more likely to be charged with a crime, young adults aged 18-30, and those of no religion.

Fostering good relations

99. We do not anticipate that the proposals would have a particular impact on relations between those who do and do not share a protected characteristic.

Advice and Assistance and Advocacy Assistance

100. This section lays out the equalities impacts of our proposed changes to the criminal advice and assistance (A&A) and advocacy assistance (AA) legal aid means test.

101. We are proposing increases to the income and capital thresholds for A&A/AA, which would benefit people applying for legal aid for these matters by making them eligible for legal aid, or by meaning they no longer have to pay a contribution towards their legal aid. The introduction of an earnings threshold for passporting Universal Credit recipients could negatively affect some people, but as most applicants for A&A/AA are prisoners, and prisoners are in most cases unable to claim Universal Credit, we do not anticipate this proposal would have a significant effect on prisoners' eligibility for legal aid. People who would be affected by our policy changes to A&A/AA would therefore be much more likely to be positively rather than negatively affected.

Data and methodology

102. In considering the impact on those with protected characteristics, we have compared data on the protected characteristics of offenders who are in prison or under Probation Service supervision with the prevalence of those characteristics in the general population.¹⁴ This is because most A&A/AA cases fall into the category of prison law, so offenders are an appropriate proxy for those who will be affected by the proposals. We have used data from the Family Resources Survey on the characteristics of the wider population.

103. We do not have data on the following characteristics of individuals who are offenders:

- a. Disability
- b. Gender Reassignment

¹⁴ <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2019>, accessed 01-02-2022

- c. Pregnancy and Maternity
- d. Sexual Orientation

We are therefore unable to undertake a quantitative assessment of the equalities impacts on these groups. None of these groups will be directly discriminated against as a result of our proposals, because the proposals will not treat anyone with a protected characteristic less favourably because of their protected characteristic.

Eliminating discrimination, harassment and victimisation

104. In relation to eliminating discrimination, harassment and victimisation, we do not consider that our proposals in relation to A&A/AA means testing would result in direct discrimination, as the changes would be applied in the same way to all legal aid applicants irrespective of their protected characteristics.
105. In relation to indirect discrimination, people with certain protected characteristics are over-represented as criminal A&A and AA legal aid recipients compared with the general population. This over-representation of particular protected characteristics amongst our existing profile of recipients means that the proposals are likely to have greater implications for those who share some specific protected characteristics compared with those who do not. For example, the cohort who would be affected by the proposals are more likely to be black or black British or of mixed ethnicity compared to the total population of England and Wales.
106. We consider that any indirect discrimination resulting from the proposals is a proportionate means of achieving the legitimate aim of updating the A&A/AA means test, with a view to ensuring effective access to justice and ensuring that legal aid is targeted at those who need it most.

Detailed analysis of the impact on those with protected characteristics

107. In relation to **ethnicity**, those of black or black British or of mixed ethnicity would be particularly likely to benefit from our proposals as they make up a significantly larger proportion of offenders than of the wider population (13% and 5% of offenders respectively, compared to 3% and 2% in the wider population). Those who are White would be less likely to be affected, making up 72% of offenders compared to 89% of the population.
108. In relation to **religion**, there is a lower proportion of those identifying as Christian (47%) among those likely to be affected by the proposed changes than in the overall population (60%), and a higher proportion of those identifying as Muslim (16%) than in the overall population (4%).
109. In relation to **sex**, those who are likely to be affected by the proposed changes are much more likely to be men (95%) than the overall population (49%), due to the high prevalence of men within the criminal justice system. As a result, we would expect a much greater proportion of men to benefit from the proposals.
110. In respect of **age**, the breakdown of those who would be affected by the proposed changes shows a greater proportion of younger adults (66% aged 15-39) than in the overall population (36% aged 16-40). Consequently, we would foresee a greater number of younger adults being positively impacted by our proposals.

Equality of opportunity

111. These proposals expand legal aid eligibility for individuals who have some involvement with the criminal justice system (predominantly prisoners). The proposals would bring the income and capital thresholds to the same level as for other areas of legal aid, which would create parity between the prisoner cohort and other cohorts of legal aid recipients, therefore promoting equality of opportunity. Increasing access to legal aid for these individuals would support them to have their voice heard throughout their involvement with the criminal justice system. We therefore think that our policy proposals will support equality of opportunity.

Fostering good relations

112. We do not anticipate that the proposals would have a particular impact on relations between those who do and do not share a protected characteristic.

113. We will continue to consider new evidence of equalities impacts in relation to the MTR and amend our equality assessment if needed.