Equalities Assessment

Government Response to Legal Aid Means Test Review

May 2023

Contents

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 policy changes on people with particular protected characteristics. Under our policies, 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 benefitting from our policies. 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 adversely affected by our policies.

3. We do not include the effects of changes to a contribution amount among those who remain within the scope of contributory legal aid. As a result, it is likely that we are underestimating the number of people who have a beneficial outcome.

4. The transitional arrangements we have adopted will 1) enable existing legal aid recipients to benefit from our policies, via reassessment, 2) allow any defendants to opt for the new means test where a reassessment has been carried out and the previous Crown Court means test has been applied and, 3) will protect existing civil legal aid recipients who apply for reassessment from any detrimental impact of the policies on passporting and the pensioners' disregard.

5. We have set out the impact of the policies for civil legal aid and criminal legal aid separately, as the policies differ in some cases and the characteristics of civil and criminal legal aid recipients vary. We have 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 policies 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 lose out from another, and assessing the impact as a whole allows us to capture the overall change to their eligibility.

6.   Throughout this statement we have examined impact by reference to the England and Wales population as a whole and the population of legal aid users. These two groups have different compositions. When we use the term 'population' we are referring to the impact on the population as a whole. When we refer to 'take up of legal aid' or 'benefit in practice' we are referring to the impact on legal aid user population. Paragraph 10 below describes the methodology used to define these populations.

7.   We first present our assessment for the civil legal aid measures and describe the data and methodology used for this analysis, followed by an account of our findings for civil legal aid according to each protected characteristic. We then take the same approach for the criminal legal aid. The data and methodology are described before we present the impact analysis for the criminal legal aid measure according to each protected characteristic.

Civil legal aid

Data and methodology

8. For detailed information regarding the analytical methodology and assumptions, please refer to the impact assessment.

9. The equalities analysis captures the changes to the core civil representation and legal help means tests criteria. These include nearly all the changes to the income, capital, contributions, allowances, and passporting rules (further details can be found in the accompanying impact assessments).

10. 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 orientation, 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 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 a particular group of individuals are to take up legal aid and so we consider it to be the more reliable measure of impact.

11. Unless otherwise stated, volumes impacts are rounded to the nearest 1,000. The percentages in tables below may not sum to 100% because they are rounded to the nearest percentage.

12. 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. We do not consider that any of the policies will result in direct discrimination in relation to these groups, as the policies will not treat anyone with these protected characteristics less favourably because of their protected characteristic. If the policies were to result in any indirect discrimination, we consider this would be justified by the wider policy aims of the changes to ensure that the means test is fair and legal aid is targeted at those who need it the most.

13. The analysis below 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. However, generally it was determined that individuals who are male or from an ethnic minority would be more likely to face an adverse cost impact on our policy to introduce contributions for immigration and asylum proceedings.

14. Those most likely to receive legal aid for civil legal help at inquests are female. The other non-means tested areas focus on under 18s, so they are the group most likely to be newly eligible. We therefore expect most beneficiaries from the removal of the means test for inquests to be female, and under 18 years old for the other non-means testing measures.

15. For the measures listed below, we have used the additional data sources described to analyse the equalities impact. It was not possible to use our central models to estimate the equalities impacts of these components to the means test. This is due to the fact that the Family Resources Survey (FRS), which is the basis for our modelling, does not contain the relevant data. As a result, we cannot rely on FRS data to identify affected households. Therefore, we have used other the data sources described to assess the equalities impact.

16. This is likely to result in an underestimation of the number of those that benefit, since we cannot identify which people in the central model will benefit from the policy components described at (a) to (h) below. As most of the means test policy changes will widen access to legal aid, we have not overlooked any negative impact, but some groups will be more likely to benefit than our modelling suggests. The costings for the measures suggest that these changes will affect a relatively small number of people. Our assessment of the impact of these policies 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 46% of newly indebted adults compared to 25% in the population[1]; and 2) families where the head of household was in their twenties (more than a third of whom were in arrears).[2] We therefore anticipate that these age groups will 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

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[1] StepChange Debt Charity, *Statistics Yearbook: Personal Debt in the UK January – December 2021*, available at StepChange-Statistics-Yearbook-2021.pdf, pg 6

[2] Department for Work and Pensions, *Characteristics of families in debt and the nature of Indebtedness* (2004, Research Report No 211) available at 185SUMM (bristol.ac.uk) pg 2 and pfrc0402.pdf (bristol.ac.uk)

November 2021) and young (59% under the age of 40).[3] This does not mean that young women will 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 more from civil representation, where women make up 60% of recipients currently.[4]

b) **Contested assets:** We expect that our policy to disregard contested assets will substantially 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 policy will also mean women are more likely to benefit from our policies than the tables below suggest.

c) **Inaccessible capital:** Based on information from stakeholders about inaccessible capital, we expect this to mainly affect victims of abuse, who may find it difficult to access a property they own with their abuser. As victims of abuse are more likely to be female, this policy will mean women are more likely to be affected by this policy than the tables below suggest. This may have a positive impact as making the disregard mandatory may mean it is applied in more cases.

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. There are a number of disregards and as such, there is no overarching group of individuals who stand to benefit. In addition, some provisions 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. 68% of clients are from an ethnic minority (comprising of Asian or Asian British; black, black British, Caribbean or African; mixed or multiple ethnicity; or other ethnicity), compared to 18% in the wider population.[5] However, a relatively large proportion of clients did not disclose their ethnicity which makes it difficult to draw firm conclusions. Existing recipients are also more likely to be male. Therefore, individuals who are male or from an ethnic minority will be more likely to benefit from our policies than the tables below suggest. They will also be more likely to face an adverse cost impact from our policy to introduce contributions for all immigration and asylum proceedings.

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[3] The Money Charity, *The Money Statistics: January 2022*, available at PowerPoint Presentation (themoneycharity.org.uk)

[4] Legal aid statistics: July to September 2022 – GOV.UK, available at Legal aid statistics England and Wales bulletin Jul to Sep 2022 - GOV.UK (www.gov.uk)

[5] Legal aid statistics: July to September 2022 – GOV.UK, available at Legal aid statistics England and Wales bulletin Jul to Sep 2022 - GOV.UK (www.gov.uk)

    f) 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 are female (73% of recipients in 2019–2020). We therefore expect most beneficiaries from this change to be female.

    g) **Domestic abuse victims on UC applying for protective orders:** Existing recipients of legal aid for domestic violence cases are much more likely to be female (82% of clients compared to 51% in the general population). They are also more likely to be younger, with 44% of clients aged 25–34 and 25% aged 35–44, compared to 14% and 13% in the general population, respectively.

17. Whilst the policies listed at (a) to (g) lead to differing outcomes according to the protected characteristics listed, this is a secondary effect which arises from the nature of the legal matters and differing probability that groups with a protected characteristic would need a given type of legal service. As these measures will be equally available to all applicants regardless of their characteristics, we consider these policies to be a fair means of achieving a legitimate aim of supporting access to justice.

18. Policies (h) and (i) are based on an age limit, and our assessment of their impact is as follows:

    h) **Non-means tested civil representation for under-18s:** This policy means those under 18 will be a lot more likely to benefit from our policies than the tables below suggest. This policy constitutes more favourable treatment on the basis of age. However, we feel that this difference in treatment is 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 up until their 18th birthday[6] (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 new civil means test.

    i) **Removing the means test for the withdrawal or withholding of lifesaving treatment for children**: This policy risks indirect discrimination by association on the basis of age, as the policy limits means-free legal aid to the parents of

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6 See Department for Education, *Participation of young people in education, employment or training: Statutory guidance for local authorities* (September 2016), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561546/Participation-of-young-people-in-education-employment-or-training.pdf

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 will be likely to affect about 5 cases per year. 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.

Baselines used to assess the impact of our policies

19. Assessing the impact of our policies 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.

20. 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, since 2013, many more claimants have moved onto UC. This includes those in work who will have been in receipt of housing benefit or tax credits and will not have been previously income passported for legal aid purposes. These legacy benefits have been transformed into UC benefits, and therefore individuals are being passported where they were not before, despite the fact that the nature of the benefit they receive has stayed the same, albeit with a different label.

21. 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.

22. 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:

23. **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.

24. **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.

25. 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.

26. 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

27. We do not consider that our policies will result in direct discrimination, as none of the policies will treat anyone with a protected characteristic less favourably because of their protected characteristic.

28. In respect of indirect discrimination, the policies 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 impacts are uneven, however we consider that if this does amount to indirect discrimination, this is justified by the wider policy aims to ensure that the means test is fair and legal aid is targeted at those who need it the most.

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

29. In this section we assess the impact of the 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 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.

30. This baseline may overestimate the positive impact of our policies 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 policies.

31. 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 policies. The tables on legal aid cases show the percentages of those who are impacted by

the policies who fall into a particular cohort (such that columns add to 100%). We present analysis for both populations described in paragraphs 6 and 9. The difference in the compositions of these populations leads to different impact analyses. For example, in Table 1 (population eligibility impacts by ethnicity), we estimate that 12% of white individuals in the population would benefit from our civil policies, while Table 2 (civil representation cases where eligibility status changes, by ethnicity) demonstrates that 79% of beneficiaries in the civil legal aid population are expected to be white.

32. Since our tables on legal aid cases show the proportion of people who are affected by characteristic, it's important to provide context to the overall volumes. The number of clients that we estimate will benefit against this baseline is 15,000 for civil representation and 42,000 for legal help. No clients will experience an adverse impact for either civil representation or legal help.

33. Overall, 13% of the population will benefit from our policies, while 0% are estimated to be detrimentally affected.

34. In relation to **race**, we have used ethnicity as a proxy. At a population level we estimate that individuals from ethnic minorities will be overrepresented as those that benefit from our policies, particularly those who are of other ethnicity (25% will benefit compared to 13% of the whole population), Asian, Asian British or Asian Welsh individuals (20% will benefit) and black, black British, black Welsh, Caribbean, or African individuals (22% will benefit). White adults are not disproportionately likely to be affected by our policies.

Table 1: Population eligibility impacts by ethnicity (Baseline 1)

Ethnicity	Benefit	No Change
White	12%	87%
Mixed/Multiple ethnic groups	17%	83%
Asian/Asian British/Asian Welsh	20%	79%
Black/black British/black Welsh/Caribbean/African	22%	78%
Other ethnic group	25%	75%
Total	**13%**	**86%**

35. When we look at what the impact will be in terms of take up of legal aid, individuals from ethnic minority groups will be more likely to benefit compared to their representation in the population. Asian, Asian British or Asian Welsh individuals will be particularly likely to be overrepresented as those that benefit for both civil representation (10% of beneficiaries compared to making up 9% of the general

population) and legal help (12% of all beneficiaries compared to making up 9% of the general population).

Table 2: Civil representation cases where eligibility status changes, by ethnicity (Baseline 1)

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

Table 3: Legal help cases where eligibility status changes, by ethnicity (Baseline 1)

Ethnicity	Benefit
White	79%
Mixed/multiple ethnic groups	2%
Asian/Asian British/ Asian Welsh	12%
Black/black British/black Welsh/ Caribbean/African	5%
Other ethnic group	2%
Total	**100%**

36. In relation to **sex**, there is only a marginal difference in the percentage of men and women estimated to benefit, with 15% of women and 12% of men in the population benefitting. Women are therefore slightly more likely to benefit from our policies.

Table 4: Population eligibility impacts by sex (Baseline 1)

Sex	Benefit	No Change
Male	12%	88%
Female	15%	85%
Total	**13%**	**86%**

37. When we look at what the impact will be in terms of take up of legal aid, women will be significantly more likely to benefit from our policies for civil representation compared to their representation in the population, with 78% of beneficiaries being women but making up 51% of the general population. We also expect that our proposal to disregard contested assets will disproportionately benefit victims of

domestic abuse, as set out in paragraph 16b). As victims of domestic abuse are more likely to be female, this policy will also mean women will be more likely to benefit from our policies.[7] For legal help, the expected impacts will be split almost equally amongst male and females (49% of those that benefit are estimated to be male and 51% female).

Table 5: Civil representation cases where eligibility status changes, by sex (Baseline 1)

Sex	Benefit
Male	22%
Female	78%
Total	**100%**

Table 6: Legal help cases where eligibility status changes, by sex (Baseline 1)

Sex	Benefit
Male	49%
Female	51%
Total	**100%**

38. 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 policies, with 14% of those that are disabled benefitting, which is broadly in line with the proportion of those who are not disabled.

Table 7: Population eligibility impacts by disability (Baseline 1)

Disability	Benefit	No Change
Yes	14%	86%
No	13%	87%
Total	13%	86%

39. When we look at what the impact will be in terms of take up of legal aid, disabled people will be more likely to benefit from our policies compared to their representation in the general population, with 26% of the civil representation beneficiaries estimated to be disabled compared to comprising 18% of the general

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7   Office for National Statistics, *Domestic abuse victim characteristics, England and Wales: year ending March 2022,* available at Domestic abuse victim characteristics, England and Wales - Office for National Statistics (ons.gov.uk)

population. Disabled people will be slightly less likely to benefit from our policies for legal help, with 20% of beneficiaries being disabled.

Table 8: Civil representation cases where eligibility status changes, by disability (Baseline 1)

Disability	Benefit
Yes	26%
No	74%
Total	**100%**

Table 9: Legal help cases where eligibility status changes, by disability (Baseline 1)

Disability	Benefit
Yes	20%
No	80%
Total	**100%**

40. In relation to **age**, our policies are more likely to benefit adults in the population who are younger, with 18% of 16–30-year-olds benefitting. This tapers with age up to the oldest group, those aged 60 and over, only 9% of whom will 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.[8] Older people are also more likely to own their house outright, so they may be more likely to fail the capital test.[9]

Table 10: Population eligibility impact by age (Baseline 1)

Age Band	Benefit	No Change
16–30	18%	82%
31–40	18%	82%
41–50	16%	84%
51–59	10%	90%
60+	9%	91%
Total	13%	86%

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[8] Office for National Statistics, *Earnings and hours worked, age group: ASHE Table 6*, https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/agegroupashetable6, Table 6.7a

[9] GOV.UK, *Home ownership* (published 2020), available at https://www.ethnicity-facts-figures.service.gov.uk/housing/owning-and-renting/home-ownership/latest#by-ethnicity-and-age-group, section 6

41. When we look at what the impact will be in terms of take up of legal aid, despite 16–30-year-olds having the joint highest benefit at population level, those aged 31–50 will be more likely to benefit in practice (64% of civil representation beneficiaries are expected to fall in the 31–50 age group compared to making up 32% of people aged 16+ in the general population). This is because applicants in this age group 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 (making up 37% of the legal help beneficiaries compared to comprising 17% of people aged 16+ in the general population). For both civil representation and legal help, relatively few of the older population (60+) benefit, with only 5% or 6% respectively of those that benefit falling within this cohort, compared to making up 28% of people aged 16+ in the general population.

Table 11: Civil representation cases where eligibility status changes, by age (Baseline 1)

Age Band	Benefit
16–30	20%
31–40	35%
41–50	29%
51–59	11%
60+	5%
Total	**100%**

Table 12: Legal help cases where eligibility status changes, by age (Baseline 1)

Age Band	Benefit
16–30	24%
31–40	37%
41–50	24%
51–59	9%
60+	6%
Total	**100%**

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

Table 13: Population eligibility impacts by sexual orientation (Baseline 1)

Sexual Orientation	Benefit	No change
Heterosexual/Straight	14%	86%
Gay/lesbian	9%	91%
Bisexual	16%	84%
Other	18%	82%
Refuse to say	17%	83%
Total	**13%**	**86%**

43.   When we look at legal aid volumes, heterosexual individuals will be underrepresented as benefitting from the policies, making up 79% of additional civil representation volumes and 71% for legal help, compared to comprising 89% of the general population. However, as with the population data, a large proportion of the population refused to disclose their sexual orientation so we cannot draw firm conclusions from this data.

Table 14: Civil representation cases where eligibility status changes, by sexual orientation (Baseline 1)

Sexual Orientation	Benefit
Heterosexual/Straight	79%
Gay/lesbian	1%
Bisexual	1%
Other	1%
Refuse to say	19%
Total	**100%**

Table 15: Legal help cases where eligibility status changes, by sexual orientation (Baseline 1)

Sexual Orientation	Benefit
Heterosexual/Straight	71%
Gay/lesbian	0%
Bisexual	1%
Other	1%
Refuse to say	28%
Total	**100%**

44. In relation to **religion**, the population data suggests the individuals that will benefit the most from the changes are Muslim (25% estimated to benefit) and Sikh (24% estimated to benefit). Those with no religion or of Christian faith will be least likely to benefit from the changes (13% of each are estimated to benefit in the population).

Table 16: Population eligibility impacts by religion (Baseline 1)

Religion	Benefit	No Change
No religion	13%	87%
Christian	13%	87%
Buddhist	15%	85%
Hindu	14%	84%
Jewish	18%	82%
Muslim	25%	74%
Sikh	24%	76%
Other or unknown	17%	82%
Total	**13%**	**86%**

45. As per the population data, the data on take up of legal aid suggests that Muslims will 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 comprising 6% of the general population. Those of Christian faith will also be more likely to benefit, since they make up 53% (civil representation) and 52% (legal help) of those that benefit, compared to making up 46% of the general population.

Table 17: Civil representation cases where eligibility status changes, by religion (Baseline 1)

Religion	Benefit
No religion	33%
Christian	53%
Buddhist	1%
Hindu	1%
Jewish	0%
Muslim	9%
Sikh	1%
Other or unknown	2%
Total	**100%**

Table 18: Legal help cases where eligibility status changes, by religion (Baseline 1)

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

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

46.   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.

47.   This baseline overstates the negative impact of our policies because it assumes that UC is fully rolled out and all UC recipients are passported, but only 69% of households have been moved onto UC (as of February 2023).[10] 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.

48.   For context, the number of clients that we estimate will benefit against this baseline is 8,000 for civil representation and 25,000 for legal help, and the number of clients we estimate will have a detrimental impact is 5,000 for civil representation and 9,000 for legal help.

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[10]   UK Parliament, *Constituency data: Universal credit rollout* (2023), available at https://commonslibrary.parliament.uk/constituency-data-universal-credit-roll-out/, found in the total households Great Britain UC percentage

49. Overall, 8% of the population are estimated to benefit from our policies while 4% are estimated to experience a detrimental impact.

50. 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 policies: 9% of these individuals are estimated to benefit at a population level, but 12% are estimated to have a detrimental outcome, resulting in a net detrimental effect of 3% for this group. All other ethnic groups have a net benefit.

Table 19: Population eligibility impacts by ethnicity (Baseline 2)

Ethnicity	Benefit	Detriment	No Change
White	8%	3%	88%
Mixed/multiple ethnic groups	10%	5%	85%
Asian/Asian British	11%	8%	81%
Black/black British/Caribbean/African	9%	12%	79%
Other ethnic Group	14%	6%	80%
Total	**8%**	**4%**	**87%**

51. When we look at what the impact will 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) will 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 (Baseline 2)

Ethnicity	Benefit	Detriment
White	82%	79%
Mixed/multiple ethnic groups	1%	1%
Asian/Asian British	10%	12%
Black/black British/Caribbean/African	4%	6%
Other ethnic Group	1%	1%
Total	**100%**	**100%**

Table 21: Legal help cases where eligibility status changes, by ethnicity (Baseline 2)

Ethnicity	Benefit	Detriment
White	80%	77%
Mixed/multiple ethnic groups	0%	1%
Asian/Asian British	12%	18%
Black/black British/Caribbean/African	4%	2%
Other ethnic Group	4%	2%
Total	**100%**	**100%**

52. In relation to **sex**, there are a similar proportion of male and females expected to benefit from the policies (8% males and 9% females), whereas both males and females are estimated to have the same detrimental outcome (4%).

Table 22: Population eligibility impacts by sex (Baseline 2)

Sex	Benefit	Detriment	No Change
Male	8%	4%	88%
Female	9%	4%	87%
Total	**8%**	**4%**	**87%**

53. We expect that our policy to disregard contested assets, which is not reflected in these figures, will disproportionately benefit victims of domestic abuse, who are more likely to be female. This would increase females who benefit and decrease the proportion who detriment. When we look at what the impact will be in terms of take up of legal aid, individuals expected to benefit and detriment in civil representation cases are more likely to be female. The reverse is true for legal help cases where individuals expected to benefit and detriment are more likely to be male, but they are more evenly distributed.

Table 23: Civil representation cases where eligibility status changes, by sex (Baseline 2)

Sex	Benefit	Detriment
Male	31%	28%
Female	69%	72%
Total	**100%**	**100%**

Table 24: Legal help cases where eligibility status changes, by sex (Baseline 2)

Sex	Benefit	Detriment
Male	55%	53%
Female	45%	47%
Total	**100%**	**100%**

54. In relation to **disability**, we use 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 7% for those who are disabled compared to a net benefit of 4% for those who are not disabled, so our policies are slightly more likely to benefit those who are disabled compared to those who are not.

Table 25: Population eligibility impacts by disability (Baseline 2)

Disability	Benefit	Detriment	No Change
Yes	10%	3%	87%
No	8%	4%	88%
Total	**8%**	**4%**	**87%**

55. When we look at what the impact will be in terms of take up of legal aid, the conclusions are similar: the proportion of additional case volumes for civil representation (26%) and legal help (22%) which come from people who are disabled are slightly higher than the proportion of the general population who are disabled (18%). The same is true of cases where people will be detrimentally affected (24% for civil representation and 25% for legal help).

Table 26: Civil representation cases where eligibility status changes, by disability (Baseline 2)

Disability	Benefit	Detriment
Yes	26%	24%
No	74%	76%
Total	**100%**	**100%**

Table 27: Legal help cases where eligibility status changes, by disability (Baseline 2)

Disability	Benefit	Detriment
Yes	22%	25%
No	78%	75%
Total	**100%**	**100%**

56.   In relation to **sexual orientation**, people of other sexuality are likely to disproportionately benefit from our policies, 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 orientation so we cannot draw firm conclusions from this data.

Table 28: Population eligibility impacts by sexual orientation (Baseline 2)

Sexual Orientation	Benefit	Detriment	No change
Heterosexual/Straight	8%	4%	88%
Gay/lesbian	7%	12%	82%
Bisexual	12%	3%	85%
Other	17%	0%	83%
Refuse to say	10%	4%	86%
Total	**8%**	**4%**	**87%**

57.   When we look at take up of legal aid, heterosexual individuals will be underrepresented as benefitting from the policies, making up 65% of additional civil representation volumes and 66% for legal help, compared to 89% of the general population. They will also be underrepresented as those detrimentally affected, but to a lesser extent. However, as with the population data, a large proportion of the population refused to disclose their sexual orientation so we cannot draw firm conclusions from this data.

Table 29: Civil representation cases where eligibility status changes, by sexual orientation (Baseline 2)

Sexual Orientation	Benefit	Detriment
Heterosexual/Straight	65%	81%
Gay/lesbian	1%	1%
Bisexual	1%	1%
Other	1%	0%
Refuse to say	33%	18%
Total	**100%**	**100%**

Table 30: Legal help cases where eligibility status changes, by sexual orientation (Baseline 2)

Sexual Orientation	Benefit	Detriment
Heterosexual/Straight	66%	71%
Gay/lesbian	1%	0%
Bisexual	1%	1%
Other	1%	0%
Refuse to say	32%	28%
Total	**100%**	**100%**

58. In relation to **age**, our policies are less likely to have a detrimental impact on those who are aged over 50 (1% of 51–59-year-olds and 0% of 60+-year-olds experience a negative impact). 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 6%, whereas those between 31–40 are most likely to be detrimentally affected, with a net negative impact of 2%.

Table 31: Population eligibility impact by age (Baseline 2)

Age Band	Benefit	Detriment	No Change
16–30	12%	6%	82%
31–40	8%	10%	82%
41–50	7%	5%	88%
51–59	7%	1%	92%
60+	8%	0%	91%
Total	**8%**	**4%**	**87%**

59. When we look at what the impact will be in terms of take up of legal aid, those in the 31–40 age group will remain the most likely to be detrimentally affected by our policies for civil representation (48%) and legal help (56%) compared to their representation in the general population for people aged 16+ (17%).

Table 32: Civil representation cases where eligibility status changes, by age (Baseline 2)

Age Band	Benefit	Detriment
16–30	25%	22%
31–40	26%	48%
41–50	24%	25%
51–59	15%	4%
60+	10%	1%
Total	**100%**	**100%**

Table 33: Legal help cases where eligibility status changes, by age (Baseline 2)

Age Band	Benefit	Detriment
16–30	28%	22%
31–40	28%	56%
41–50	20%	22%
51–59	12%	0%
60+	12%	0%
Total	**100%**	**100%**

60. In relation to **religion**, the population data suggests the individuals that will benefit the most from the changes are Sikh (17% are estimated to benefit) or of Jewish faith (16% estimated to benefit). Muslims will be most likely to have a detrimental outcome (13%).

Table 34: Population eligibility impact by religion (Baseline 2)

Religion	Benefit	Detriment	No Change
No religion	7%	5%	88%
Christian	9%	3%	88%
Buddhist	10%	2%	88%
Hindu	10%	5%	85%
Jewish	16%	4%	80%
Muslim	10%	13%	77%
Sikh	17%	1%	82%
Other or unknown	9%	4%	87%
Total	**8%**	**4%**	**87%**

61. When we look at take up of legal aid, Muslims will be relatively the most likely to be detrimentally affected by the changes since they make up 11% of civil representation volumes and 14% of legal help, compared to 6% of the general population. Those of no religion may also be disproportionately likely to be detrimentally affected, making up 39% of this group compared to 37% of the general population.

Table 35: Civil representation cases where eligibility status changes, by religion (Baseline 2)

Religion	Benefit	Detriment
No religion	27%	39%
Christian	60%	45%
Buddhist	1%	0%
Hindu	2%	2%
Jewish	1%	1%
Muslim	7%	11%
Sikh	1%	0%
Other or unknown	1%	1%
Total	**100%**	**100%**

Table 36: Legal help cases where eligibility status changes, by religion (Baseline 2)

Religion	Benefit	Detriment
No religion	31%	39%
Christian	56%	44%
Buddhist	1%	0%
Hindu	2%	2%
Jewish	1%	0%
Muslim	5%	14%
Sikh	2%	0%
Other or unknown	1%	0%
Total	**100%**	**100%**

Advancing equality of opportunity

62. Our policies will benefit more people at a population level than those who will 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 policies, 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 policies 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.

63. Some protected groups will be more likely to be detrimentally affected, as outlined in the section above, predominantly due to our changes to passporting. We consider this is fair because our policies will 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 will be eligible for non-contributory legal aid if assessed under the new means test. We consider that our policies will advance equality of opportunity by significantly widening access to legal aid for people on low incomes.

Fostering good relations

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

65. We will continue to monitor the equalities impacts in relation to the implementation of these policies.

Criminal legal aid

Data and methodology

66. In modelling the impact of these policies, we have compared the estimated impacts of the new criminal schemes against the current schemes, where it is assumed all legacy benefit recipients have been transitioned to Universal Credit and Universal Credit recipients are passported through the income tests (Baseline 2).

67. Using Baseline 2 underestimates the number of people who benefit from our policies, as UC is not fully rolled out at present, so as people actually move from non-passported legacy benefits onto UC they will benefit from our policy to passport all UC recipients through the income assessment. We have used this baseline because 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 policies.

68. 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 at population level compared with legal aid take-up. This is because the latter takes into account how likely a particular group of individuals is to take up legal aid, and we consider the latter is the more reliable measure of impact.

69. 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 policies. As above, we have presented analysis for both populations described in paragraphs 6 and 9. The difference in the compositions of these populations leads to different impact analyses. The tables on legal aid cases show the percentages of those individuals impacted by the policies 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 policies, compared to table 38 which shows 85% of individuals who are estimated to take up criminal legal aid and benefit from the policies are expected to be white.

70. Unless otherwise stated, volume 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.

71. As mentioned in the civil section of this equalities statement, 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 will be directly discriminated against as a result of our policies, because the policies will not treat anyone with a protected characteristic less favourably because of their protected characteristic. If the policies do result in indirect discrimination, this is justified by the wider policy aims, to ensure that the means test is fair and legal aid is targeted at those who need it the most.

Crown Court

Eliminating discrimination, harassment, and victimisation

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

73. In respect of indirect discrimination, our policies 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 orientation, and those who are Muslim are more likely to be disadvantaged by our policies. 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 impacts are uneven, 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 policies treat people more consistently according to their means, which is the purpose of the means test. Our policies 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

74. Overall, we estimate that at a population level, 23% of individuals will benefit from our policies and 4% will suffer a detrimental effect.

75. 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, many of these individuals are unlikely to require legal aid.

76. As explained in paragraph 2, the tables on legal aid cases show the breakdowns of those who will benefit or will have a detrimental impact, by using percentages. For context, the number of clients that we estimate will benefit is around 2,000 and the number of clients we estimate will have a detrimental impact is around 3,000.

77. The detrimental impact is as a result of the proposed change to capital passporting, which will 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.

78. In relation to **race**, we have used ethnicity as a proxy. At a population level we estimate that Asian, Asian British or Asian Welsh individuals (net benefit of 4%), black, African, Caribbean, black Welsh or black British individuals (net benefit 8%), and individuals of mixed or multiple ethnic groups (net benefit 16%) will be underrepresented as those who benefit from our policies, compared to the population as a whole (net benefit 19%). White individuals will be slightly more likely to benefit at a population level (net benefit 21%).

Table 37: Population eligibility impacts by ethnicity (Baseline 2)

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

79. When we look at what the impact will be in terms of take up of Crown Court legal aid, Asian, Asian Welsh or Asian British individuals will be disproportionately more likely to be detrimentally affected by the policies, making up 25% of those negatively affected compared to making up 9% of the general population. Those who are

detrimentally affected in the Crown Court are primarily required to pay some contribution as a result of the removal of capital passporting.

Table 38: Legal aid cases where eligibility status changes, by ethnicity (Baseline 2)

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

80.   In relation to **sex,** men will be slightly more likely to benefit from the policies, 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.[11]

Table 39: Population eligibility impacts by sex (Baseline 2)

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

81.   When we look at what the impact will be in terms of take up of Crown Court legal aid, men will be disproportionately more likely to be both positively and negatively affected by the policies. This is because they are much more likely to be charged with a crime.[12]

Table 40: Legal aid cases where eligibility status changes, by sex (Baseline 2)

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

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[11]   Office for National Statistics, *Gender Pay Gap in the UK: 2022*, available at Gender pay gap in the UK - Office for National Statistics (ons.gov.uk)

[12]   Ministry of Justice, *Women and the Criminal Justice System 2021*, available at Women and the Criminal Justice System 2021 - GOV.UK (www.gov.uk)

82. 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 will be less likely to benefit from our policies, with a net benefit of 8% compared to 24% for people who are not disabled. This may be because we will 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 (Baseline 2)

Disability	Benefit	Detriment	No Change
Yes	14%	6%	81%
No	27%	3%	70%
Total	**23%**	**4%**	**73%**

83. When we look at what the impact will be in terms of take up of Crown Court legal aid, disabled people remain less likely to benefit from our policies and will be more likely to be detrimentally affected, making up 50% of those detrimentally affected but only comprising 18% of the general population.

Table 42: Legal aid cases where eligibility status changes, by disability (Baseline 2)

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

84. In relation to **age**, our policies will be more likely to benefit adults who are aged 31–59. Adults aged 41–50 will 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.[13] Young adults will be less likely to be positively or negatively affected by the policies, possibly because they have lower earnings so are more likely to already be eligible for legal aid under the current means test.

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[13] Office for National Statistics, *Earnings and hours worked, age group: ASHE Table 6*, available at https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/agegroupashetable6, Table 6.7a

Table 43: Population eligibility impact by age (Baseline 2)

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%**	**73%**

85.   When we look at what the impact will be in terms of take up of Crown Court legal aid, young people aged 18–30 will be much more likely to benefit, making up 46% of beneficiaries compared to 26% of adults in the general population. This is because younger individuals are more likely to be involved in Crown Court proceedings. Those aged 41–50 will remain the most likely to be detrimentally affected, making up 38% of this group compared to 16% of adults in the general population.

Table 44: Legal aid cases where eligibility status changes, by age (Baseline 2)

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%**

86.   In relation to **sexual orientation,** gay/lesbian individuals will be more likely to benefit from our policies. Those of other sexual orientation will be more likely to be detrimentally affected.

Table 45: Population eligibility impact by sexual orientation (Baseline 2)

Sexual Orientation	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%**	**73%**

87. When we look at what the impact will be in terms of take up of Crown Court legal aid, heterosexual people will be slightly less likely to be negatively affected by the policies, making up 79% of this group compared to 89% of the general population. Other groups do not appear disproportionately affected. However, a large proportion of respondents refused to disclose their sexual orientation, so these conclusions are not reliable.

Table 46: Legal aid cases where eligibility status changes, by sexual orientation (Baseline 2)

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

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

Table 47: Population eligibility impact by religion (Baseline 2)

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%
Other religion or unknown	15%	3%	82%
Total	**23%**	**4%**	**73%**

89. When we look at take up of legal aid, individuals with no religion will be most likely to benefit from our policies as they make up 37% of the general population but 41% of those benefitting, and they are also slightly underrepresented as those who are detrimentally impacted (34%). Muslim individuals are overrepresented as those detrimentally impacted (21%) while comprising only 7% of the general population.

Table 48: Legal aid cases where eligibility status changes, by religion (Baseline 2)

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%
Other religion or unknown	2%	0%
Total	**100%**	**100%**

Advancing equality of opportunity

90. Our policies will increase legal aid eligibility at a population level, though when we look at take up of legal aid, people will benefit in 2,000 cases but will be detrimentally affected in 3,000 cases due to the ending of passporting for capital contributions in the Crown Court. We consider that our policies will 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 policies 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 will be less likely to benefit, we consider this is fair because our policies 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 will not have to pay a contribution if means assessed.

Fostering good relations

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

92. We will continue to monitor the equalities impacts in relation to the implementation of these policies.

Magistrates' court

Eliminating discrimination, harassment, and victimisation

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

94. In respect of indirect discrimination, this policy will only disadvantage 0.1% of the population. Some groups of individuals with protected characteristics will benefit from the proposal more or less than others. Specifically, those who are disabled will be less likely to benefit from the policies. We acknowledge that the impacts are uneven, however, we consider that if this does amount to indirect discrimination, this is justified by the wider policy aims, to ensure that the means test is fair and legal aid is targeted at those who need it the most.

Impact on groups with protected characteristics

95. Overall, only 0.1% of the population are detrimentally affected by our policies whereas 7% will benefit. As a result, the estimates of how this will affect protected groups may be unreliable, due to the small numbers involved.

96. As explained in paragraph 76, the tables on legal aid cases show the proportion of those who will benefit or will have a detrimental impact. For context, the number of people that we estimate will benefit is around 11,000 and the number of clients we estimate will have a detrimental impact is around 100.

97. 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 individuals' weighted income was previously near but just under the gross threshold (therefore making them eligible) but under our policies it will be calculated to be just over the new gross threshold and also above the disposable income threshold. As a result of the low volume of those who will be detrimentally impacted, the percentages in the legal aid cases tables 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.

98. In relation to **race,** we have used ethnicity as a proxy. At a population level we estimate that most ethnicities will not be affected disproportionately by our policies, but individuals of Other ethnic groups will be overrepresented among those who benefit from our policies.

Table 49: Population eligibility impacts by ethnicity (Baseline 2)

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

99. When we look at what the impact will be in terms of take up of legal aid, white individuals will be more likely to benefit, making up 86% of beneficiaries compared to 82% of the wider population.

Table 50: Legal aid cases where eligibility status changes, by ethnicity (Baseline 2)

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

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

Table 51: Population eligibility impacts by sex (Baseline 2)

Sex	Benefit	Detriment	No Change
Male	8%	0%	93%
Female	7%	0%	93%
Total	**7%**	**0%**	**93%**

101. When we look at what the impact will be in terms of take up of legal aid, men will be disproportionately more likely to be affected by the policies. This is because they are much more likely to be charged with a crime.[14]

Table 52: Legal aid cases where eligibility status changes, by sex (Baseline 2)

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

102. 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 will not be disproportionately affected by our policies, compared to people who are not disabled.

Table 53: Population eligibility impacts by disability & non-disabled (Baseline 2)

Disability	Benefit	Detriment	No Change
Yes	7%	0%	93%
No	8%	0%	92%
Total	**7%**	**0%**	**93%**

103. When we look at what the impact will be in terms of take up of legal aid, disabled people will be slightly less likely to benefit, making up 14% of beneficiaries compared to 18% of the general population.

Table 54: Legal aid cases where eligibility status changes, by disability (Baseline 2)

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

104. In relation to **age**, our policies will be more likely to disproportionately benefit younger adults aged 18–30, with 11% of this group benefitting, compared to 7% overall.

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[14] Ministry of Justice, *Women and the Criminal Justice System 2021*, available at Women and the Criminal Justice System 2021 - GOV.UK (www.gov.uk)

Table 55: Population eligibility impact by age (Baseline 2)

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%**

105. When we look at what the impact will be in terms of take up of legal aid, the same conclusions apply. Young people aged 18–30 will disproportionately benefit compared to their representation in the general population, with 45% of individuals aged 18–30 in the magistrates' court cases benefitting, compared to making up 21% of adults in the general population.

Table 56: Legal aid cases where eligibility status changes, by age (Baseline 2)

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%**

106. In relation to **sexual orientation**, those who are bisexual will be disproportionately likely to benefit from our policies, with 11% of this group estimated to benefit compared to 7% overall. Those who are gay/lesbian will 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 orientation.

Table 57: Population eligibility impact by sexual orientation (Baseline 2)

Sexual Orientation	Benefit	Detriment	No Change
Heterosexual/Straight	7%	0%	93%
Gay/lesbian	5%	0%	95%
Bisexual	11%	0%	89%
Other	10%	0%	90%

Sexual Orientation	Benefit	Detriment	No Change
Not disclosed	30%	0%	70%
Total	**7%**	**0%**	**93%**

107. When we look at what the impact will be in terms of take up of legal aid, heterosexual people will be less likely to benefit (57%) compared to their representation in the general population as a whole (89%).

Table 58: Legal aid cases where eligibility status changes, by sexual orientation (Baseline 2)

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

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

Table 59: Population eligibility impact by religion (Baseline 2)

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%
Other religion or unknown	6%	0%	94%
Total	**7%**	**0%**	**93%**

109. When we look at take up of legal aid, individuals with no religion will be most likely to benefit from our policies as they make up 44% of magistrates' court cases expected to benefit but only 37% of the general population. Those of Christian faith have an expected benefit when compared to their proportion of the general population (47% and 46%, respectively), but are more likely to see a detrimental impact.

Table 60: Legal aid cases where eligibility status changes, by religion (Baseline 2)

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%
Other religion or unknown	1%	0%
Total	**100%**	**100%**

Advancing equality of opportunity

110. Almost all individuals who are affected will benefit from our policies. We consider that our policies will 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). Groups of individuals with a particular protected characteristic will 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

111. We do not anticipate that the policies will have a particular impact on relations between those who do and do not share a protected characteristic.

112. We will continue to monitor the equalities impacts in relation to the implementation of these policies.

Advice and Assistance and Advocacy Assistance

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

114. We are increasing income and capital thresholds for A&A/AA, which will 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 policy will have a significant effect on prisoners' eligibility for legal aid. People who will be affected by our policy changes to A&A/AA will therefore be much more likely to be positively rather than negatively affected.

Data and methodology

115. 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.[15] This is because most A&A/AA cases fall into the category of prison law, so prisoners are an appropriate proxy for those who will be affected by the policies. We have also used data from the 2021 census on characteristics of the general population in England and Wales.

116. We do not have data on the following characteristics of individuals who are offenders:
    a. Disability
    b. Gender Reassignment
    c. Pregnancy and Maternity
    d. Sexual Orientation

117. 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 policies, because the policies will not treat anyone with a protected characteristic less favourably because of their protected characteristic.

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15 HM Prison and Probation Service, Ministry of Justice, *Offender management statistics quarterly: April to June 2022*, available at Offender management statistics quarterly: April to June 2022 - GOV.UK (www.gov.uk)

Eliminating discrimination, harassment, and victimisation

118. In relation to eliminating discrimination, harassment, and victimisation, we do not consider that our policies in relation to A&A/AA means testing will result in direct discrimination, as the changes will be applied in the same way to all legal aid applicants irrespective of their protected characteristics.

119. 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 policies 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 will be affected by the policies are more likely to be black or black British or of mixed ethnicity compared to the total population of England and Wales.

120. If there were to be any indirect discrimination following these policies, we consider that it would be 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

121. In relation to **ethnicity**, those of black or black British or of mixed ethnicity will be particularly likely to benefit from our policies as they make up a significantly larger proportion of offenders than of the wider population (13% and 5% of offenders respectively, compared to 4% and 3% in the wider population). Those who are white will be less likely to be affected, making up 72% of offenders compared to 82% of the population as a whole.

122. In relation to **religion**, there is a similar proportion of those identifying as Christian (47%) among those likely to be affected by the proposed changes as in the overall population (46%), and a higher proportion of those identifying as Muslim (16%) than in the overall population (7%).

123. In relation to **sex**, those who are likely to be affected by the proposed changes are much more likely to be men (95%) than in the overall population (49%), due to the high prevalence of men within the criminal justice system. As a result, we will expect a much greater proportion of men to benefit from the policies.

124. In respect of **age**, the breakdown of those who will be affected by the proposed changes shows a greater proportion of younger adults (66% aged 15–39) than in the overall population (33% aged 16–40). Consequently, we will see a greater number of younger adults being positively impacted by our policies.

Equality of opportunity

125. These policies expand legal aid eligibility for individuals who have some involvement with the criminal justice system (predominantly prisoners). The policies will bring the income and capital thresholds to the same level as for other areas of legal aid, which will 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 will support them to have their voice heard throughout their involvement with the criminal justice system. We therefore think that our policy policies will support equality of opportunity.

Fostering good relations

126. We do not anticipate that the policies will have a particular impact on relations between those who do and do not share a protected characteristic.

127. We will continue to monitor the equalities impact in relation to the implementation of these policies.