

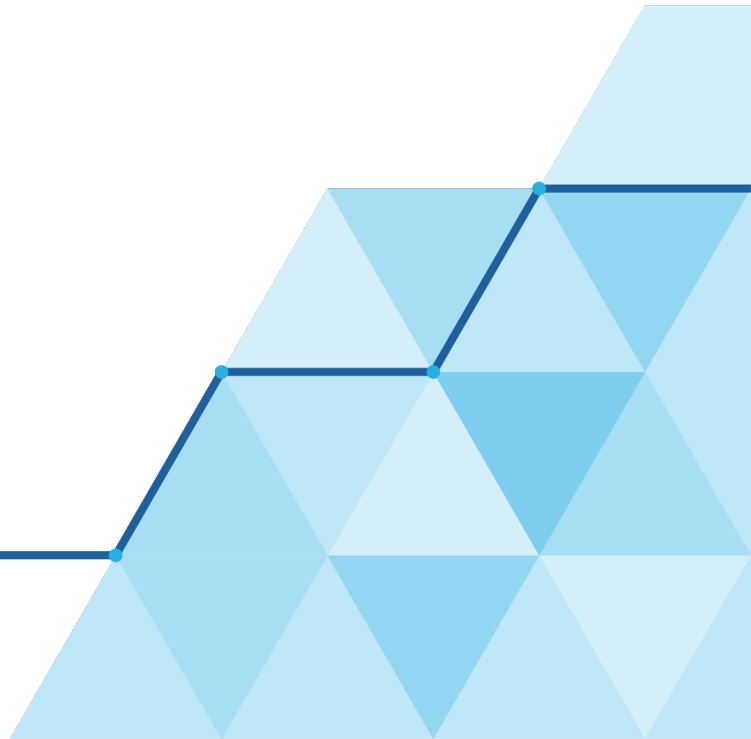


Ministry
of Justice

Civil legal aid: Towards a sustainable future

**Proposals for Housing and Immigration
fee increases and exploring contract
reform – Equalities Statement**

January 2025



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Equalities Statement

1. This Equalities Statement considers the likely equality impacts on providers, barristers and clients from the proposals set out in this consultation. The proposals on fees seek to implement changes to increase the fees payable to providers for legal aid work for Housing and Debt (Housing) and Immigration and Asylum (Immigration). Chapter 2 of the consultation aims to gather more evidence to further consider the benefits and risks of removing or reducing restrictions on remote provision of legal advice; and removing or reducing requirements for providers to have permanent offices in Standard Civil Contracts for legal aid.
2. As far as possible using the latest evidence available, we have indicated what the likely equalities impacts are in this Statement.
3. The consideration of the impact of the proposals is an ongoing duty. We will publish a government response to this consultation in due course which will set out those reforms we intend to implement. At that stage we may also publish a revised Equalities Statement in light of any responses received to the consultation.

Equality duties

4. Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have “due regard” to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act;
 - Advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - Foster good relations between people who share a protected characteristic and those who do not.
5. Paying “due regard” needs to be considered against the nine protected characteristics under the Equality Act. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, and pregnancy and maternity.

Summary of the policy change

6. The proposals aim to increase fees for providers of civil legal aid work in the Housing and Debt (referred to hereafter as Housing) and Immigration and Asylum (referred to hereafter as Immigration) legal aid sectors. Evidence from the Review of Civil Legal Aid (RoCLA) and stakeholders identified a number of challenges relating to the sustainability of civil legal aid, and suggests that the Housing and Immigration sectors are facing such challenges more acutely. Increasing fee levels paid to these providers will help address those challenges and improve sustainability, leading to improvements in the availability of legal aid services for eligible users in these categories. This may enable eligible users to resolve their legal issues more easily.
7. In addition, while not consulting on specific proposals at this stage, we are using the consultation as an opportunity to gather further information on issues raised through RoCLA around aspects of Standard Civil Legal Aid Contracts. We are currently considering options for potential changes to contractual requirements in relation to:
 - the percentage of applications for Controlled Work that can be conducted remotely; and
 - providers having a permanent office in their procurement area.
8. In developing options for potential changes in these areas, we would assess any Equalities Impacts for providers or users. At this early stage the intention behind gathering further information is to ultimately look to meet the needs of users, and to improve the experience of users and providers operating in the sector.

Methodology to determine potential discrimination

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

Proposals to increase fees for Housing and Immigration work

The pool of affected individuals

11. The primary pool of individuals affected by the proposals in the consultation will be Housing and Immigration legal aid providers, including solicitors and barristers who take on publicly funded work in these areas and any new providers who may wish to enter the legal aid market. The proposals will also affect the individuals who are seeking legal services in these areas, who we will refer to as “clients” for the purposes of this Equalities Statement.

Available data

12. Data for solicitors and barristers was obtained from Data Publication Deep Dives which the Ministry of Justice (MoJ) produced as part of RoCLA, and uses data from the 21/22 financial year for solicitors and the 22/23 financial year for barristers. We currently do not have legal aid provider data for disability, sexual orientation, pregnancy & maternity, religion or belief, gender reassignment or marriage & civil partnership, but have asked a question on equalities impacts in the consultation itself.

13. Data on legal aid clients comes from the published legal aid statistics up to March 2024.¹ We currently do not have legal aid client data for sexual orientation, pregnancy & maternity, religion or belief, gender reassignment or marriage & civil partnership, but have asked a question on equalities impacts in the consultation itself.

14. Data on the overall population comes from the 2021 Census and refers to England and Wales.²

Solicitors

15. We have used data from Data Publication Deep Dives which the MoJ is published alongside this consultation.

16. The data for Housing civil legal aid solicitors showed:

- In 2021/22, 55% of solicitors were female, compared to 37% for male with the remainder unknown. The figures for females are higher than that for the overall population (51%) and lower for males (49%). This means women are slightly more likely to benefit from the proposal and men are less likely to benefit.
- For age, 23% were aged under 35. This is lower than the overall population where around 43% of people were aged under 35. This means people in this age group are less likely to benefit from the proposal. There were 28% of solicitors aged

¹ <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-january-to-march-2024>

² [Ethnic group, England and Wales - Office for National Statistics, Population and household estimates, England and Wales - Office for National Statistics, https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/bulletins/ethnicgroupenglandandwales/census2021](https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/bulletins/ethnicgroupenglandandwales/census2021)

35–44, which is higher than the overall population where around 13% of people were aged 35–44. This means people in this age group are more likely to benefit from the proposal.

- On ethnicity, in 2021/22 the proportion of Asian or Asian British solicitors was 15%, while the proportion of White solicitors was 49%. The figure for White solicitors is lower than in the overall population, which was 81.7%, but higher for Asian or Asian British which is 9.3% in the population. This means Asian or Asian British solicitors are more likely to benefit from the proposal, while White solicitors are less likely.

17. The data for Immigration civil legal aid solicitors showed:

- In 2021/22, 53% of solicitors were female, compared to 39% for male with the remainder unknown. The figures for females are higher than that for the overall population (51%) and are lower for males (49%). This means women are slightly more likely to benefit from the proposal, and men are less likely.
- For age, 23% were aged under 35 in 2021/22. This is lower than the overall population where around 43% of people were aged under 35. This means people in this age group are less likely to benefit from the proposal. Conversely, 33% of Immigration solicitors were aged 35–44, compared to 13% in the overall population. This means people in this age group are more likely to benefit from the proposal.
- On ethnicity, in 2021/22 the number of Asian or Asian British solicitors was 27%. This is higher than in the population (9.3%). This means people in this ethnic group are much more likely to benefit from the proposal. The proportion of White solicitors was 38%, with 26% unknown and the remainder other ethnicities. The figure is lower than in the overall population, which was 81.7% for White individuals. This means people in this ethnic group are less likely to benefit from the proposal.

Barristers

18. We have also considered the impact of the above proposals on barristers, as they also undertake Housing and Immigration work. Whilst the Legal Aid Agency (LAA) does not contract with barristers directly, we understand that legal aid providers often instruct Counsel to advocate in oral court or tribunal proceedings or provide advice regarding onward appeals and therefore it is appropriate for us to also undertake this assessment.

19. We have used data from the data publication Deep Dives which the MoJ produced as part of RoCLA. This showed for barristers undertaking Housing civil legal aid work in 2022/23:

- 38% of barristers were female, compared to 57% who were male with the remainder unknown. The figures for females are lower than that for the overall population (51%) and higher for males (49%). This means women are less likely to benefit from the proposal and men are more likely to.

- For age, the largest cohort of barristers who provided age information are the 35–44 age group who made up 32% of those working on Housing civil legal aid work. This is higher than the data from the census which shows 13% of the population comes from the same age group. This means people within this age group are more likely to benefit from the proposal. Those under 35 are less likely to benefit, making up 20% of barristers compared to around 43% of the population.
- On ethnicity, in 2021/22 the proportion of Asian or Asian British barristers was 7%, while the proportion of White barristers was 75%. These figures are lower than in the overall population (9.3% for Asian or Asian British and 81.7% for White), meaning barristers in these ethnic groups are less likely to benefit from the proposal. Black, Black British, Caribbean or African people are more likely to benefit, making up 6% of barristers compared to 4% of the population.

20. For barristers undertaking Immigration civil legal aid work in 2022/23 it showed:

- 46% of barristers were female, compared to 50% for male with the remainder unknown. The figures for females are lower than that for the overall population (51%). This means women are less likely to benefit from the proposal.
- For age, the largest cohort of barristers (of those who provided age information) are the 35–54 age group, who made up 62% of the those working on Immigration civil legal aid work. This is higher than data from the 2021 census which shows around 26% of the population comes from the same age groups. This means people within these age groups are much more likely to benefit from the proposal.
- On ethnicity, in 2021/22 the proportion of Asian or Asian British barristers was 16%, while the proportion of White barristers was 67%. These figures are lower than for the overall population for White people (81.7%), but higher for Asian or Asian British people (9.3%). This means Asian or Asian British barristers are more likely to benefit from the proposal.

Clients

21. Legal aid published statistics up to March 2024 show the characteristics of clients of legal aid for Immigration, Housing, Housing Loss Prevention Advice Service (HLPAS) and Debt cases:

- Existing recipients of civil legal aid for Housing and Immigration are more likely to be from an ethnic minority, with around 33% of those who provided this information to the LAA being from an ethnic minority, compared to 18% in the wider population. This means people from a minority ethnic group are more likely to benefit from the proposal. However, there are limitations to this data as for 41% of respondents to this, their ethnicity is unknown.
- On sex, existing recipients of civil legal aid for across Housing and Immigration law are more likely to be male (65%), against 34% female with the remainder not disclosed. This means men are more likely to benefit from the proposal.

- On disability, 19% of existing recipients of civil legal aid across Housing and Immigration legal aid declared a disability, which is similar to in the wider population of 18%. This means people with a disability are likely to benefit from the proposal in line with their representation in the population. However, there are limitations to this data as for 18% of respondents to this, whether they have a disability is unknown.
- Finally, on age, existing recipients of Housing and Immigration legal aid across all categories are most likely to be aged between 25–34 (28%) which is higher than in the wider population of 13.5%. This means people in this age group are more likely to benefit from the proposal.

The Assessment

Eliminating unlawful discrimination

Direct discrimination

22. Our assessment is that paying providers higher fees for Housing and Immigration legal aid work is not directly discriminatory within the meaning of the 2010 Act, as it does not treat people differently on the basis of a protected characteristic. It is intended to address the challenges identified through RoCLA, including remuneration, and improve the sustainability of the civil legal aid sector.

Indirect discrimination

23. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act. The available data indicates that individuals between the ages of 35–44 and those who are Asian or Asian British are overrepresented amongst solicitors and barristers who do legal aid work, when compared to the general population. White individuals and those aged under 35 are less likely to benefit.

24. Amongst legal aid clients, Males, those aged 25–34 and individuals from an ethnic minority are overrepresented, while women are underrepresented.

25. However, even though certain protected groups are over- or under-represented in the groups affected by the proposal, our policy proposal would not be indirectly discriminatory because they are not likely to particularly disadvantage clients, providers, or barristers. The proposal will ensure that individuals in these categories of law can access justice by building capacity within these legal aid markets and incentivising providers and barristers to take on legal aid work brought. We therefore do not consider that the proposed change will result in clients being put at a particular disadvantage or treated less favourably because of their protected characteristic when compared to someone without the protected characteristic.

26. Furthermore, we consider that in the unlikely case that any particular disadvantage were to materialise as a result of this proposal, this would be justified as a

proportionate means to achieve the policy aim of building capacity in these markets and incentivising providers by increasing remuneration for their work.

Possible changes to Civil Legal Aid contracts

27. As we have not identified specific proposals in the consultation, the impact is hard to quantify at this stage, but a high-level assessment of the protected characteristics of these solicitors and clients across all categories of civil legal aid is set out below. As we start to develop policy options, we will fully consider the impact of these on solicitors and clients by carrying out a more detailed Equality Statement.
28. The potential areas of contractual change that we are currently considering are to requirements that limit the percentage of applications for controlled work that can be conducted remotely (i.e. without the client attending the provider's office); and to the requirement that providers have permanent offices in a procurement area. In gathering further evidence on the potential impacts of changes in these areas, we will want to ensure that we retain face-to-face advice availability for clients who need it. We also recognise that some clients who need face-to-face advice will also have protected characteristics. We will consider any potential impacts carefully as we assess and develop potential options for changes to these aspects of civil legal aid contracts.

Solicitors

29. Data from the RoCLA Data Publications Overview³ report shows the characteristics of solicitors who work for active civil legal aid firms. This report split firms into those doing Family legal aid work, those doing Other Civil legal aid work, and those doing both (termed Mixed firms). The percentage ranges here show the spread between the highest and lowest of these groupings:
- In 2021/22, more solicitors in firms doing legal aid work were female (53% to 55% were female compared to 38% to 41% being male and the remainder being unknown). The figures for females are higher than that for the overall population (51%) and slightly lower for males (49%). For age, 19% to 26% of solicitors were 25–34, and 22% to 23% were 45–54 in 2021/22. This is higher than the overall population where around 13.5% of people were aged between both 25–34 and 45–54.
 - On ethnicity, in 2021/22 the Black, Black British, Caribbean or African solicitors was 2% to 4% and the proportion of White solicitors was 62% to 71%. These figures are lower than in the overall population, which was 81.7% for White people and 4% for Black, Black British, Black Welsh, Caribbean or African people.

³ <https://assets.publishing.service.gov.uk/media/6746f8782f94bef8ff48bfe2/provider-overview.pdf>

People eligible for legal aid

30. Legal aid statistics for 2023–24 showed:

- Existing recipients of civil legal aid for all categories are more likely to be from an ethnic minority, with around 19% of those who provided this information to the LAA being from an ethnic minority, compared to 18% in the wider population.
- On sex, existing recipients of civil legal aid for across all categories are more likely to be male (50%), against 47% female with the remainder not disclosed. This compares to 49% male in the overall population and 51% female.
- On disability, 18% of existing recipients of civil legal aid across all categories of law declared a disability, which aligns with the percentage in the wider population of 18%.
- On age, existing recipients of civil legal aid across all categories are most likely to be aged between 25–34 (29%) which is higher than in the wider population of 13.5%.

Advancing equality of opportunity

31. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

32. As indicated above, the proposal is to pay higher fees for Housing and Immigration legal aid work to providers to help build capacity in these markets. It is therefore likely that providers, barristers and clients will benefit from these proposals.

33. We consider that the proposals will advance equality of opportunity by helping to ensure those who are eligible for legal aid can access a legal aid provider. We do not consider that these proposals will negatively impact on the duty to advance equality of opportunity.

Fostering good relations

34. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and victimisation

35. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Monitoring and evaluation

36. In line with our ongoing PSED obligations we will continue to consider relevant equalities data and evidence during the consultation and update the Equalities Statement as considered necessary.
37. Any final decision will include the evidence of impact from the Equalities Statement. We will continue to pay due regard to the Public Sector Equality Duty as the proposals are implemented and will consider the most effective ways of monitoring equalities impacts.
38. We would also welcome the views of respondents to the consultation on the likely equalities impacts of these proposals.



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