



Ministry
of Justice

Criminal Legal Aid Review

Remuneration for pre-charge engagement

Equality Statement





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Introduction

1. This Equality Statement addresses the equality impacts of our policy for the final element of the accelerated areas. This Equalities document sets out an analysis of the equalities impacts arising from the **proposal** to introduce a new fee for work associated with engagement with prosecution authorities at the pre-charge stage.
2. Section 149 of the Equality Act 2010 requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
 - eliminate discrimination, harassment and victimisation and other conduct prohibited by the 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.
3. Paying 'due regard' needs to be considered against the nine 'protected characteristics' under the 2010 Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Policy summary

Pre-charge engagement

4. In 2018, the Attorney General's Office (AGO) published its review of the efficiency and effectiveness of disclosure in the criminal justice system. It found that early and meaningful engagement between the prosecution team and the defence is crucial to improve the disclosure process and that a lack of pre-charge discussion between investigators/prosecutors and those representing the suspect hamper early resolution of evidential issues, particularly where there is a large quantity of digital material.
5. The review recommended that the AG's Disclosure guidelines should include guidance on pre-charge engagement and that the Ministry of Justice should review how such work is remunerated. Remuneration for pre-charge engagement was one of the five areas we agreed to accelerate as part of the Criminal Legal Aid Review.
6. The AGO^{1 2} have now published their revised disclosure guidelines which include pre-charge engagement guidance which can be found summarised in paragraph 13 of the consultation document.
7. As a result of the changes recommended by the AG, we have proposed a new unit of contracted work for pre-charge engagement to be paid at an hourly rate at the current Police Station advice and assistance hourly rates. The rates vary by location, time of day and severity of offence. The fee will be paid in addition to the police station fee. The full policy rationale can be found in the consultation document which is published alongside this equalities statement.
8. Pre-charge engagement refers to voluntary engagement between the parties to an investigation after the first PACE interview, and before any suspect has been formally charged. Pre-charge engagement is a voluntary process and it may be terminated at any time. It does not refer to engagement between the parties to an investigation by way of further PACE interviews.
9. We propose a new unit of work for advice and assistance associated with pre-charge engagement. This work will be remunerated where it is agreed between the relevant parties (prosecutors, investigators, suspects and suspect's legal representatives) that it

¹ AGO disclosure guidelines - <https://www.gov.uk/government/publications/review-of-the-efficiency-and-effectiveness-of-disclosure-in-the-criminal-justice-system>

² <https://www.gov.uk/government/publications/consultation-on-revisions-to-the-attorney-generals-guidelines-on-disclosure-and-the-cpia-code-of-practice>

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may assist the investigation and a full written record of the discussions is made by the defence. It can be initiated by either party and may include, but is not limited to, the examples given in paragraph 16 of the consultation document.

10. We are proposing this work be paid at an hourly rate at the current Police Station Advice and Assistance rates (£51.28 in London, £47.45 outside London) subject to an upper limit of £273.75 which may be extended on application to the LAA. As this work will always involve engaging with the police and/or prosecution, we consider these to be the most comparable existing rates to remunerate this work.
11. Similar to other pre-charge work, we propose that advice and assistance associated with pre-charge engagement is not means tested, but a sufficient benefits test must be satisfied.

Under this proposal, providers will not be required to apply separately for this fee, instead they will self-grant and record on file similar to other pre-charge work. However, the provider will be required to retain on file written proof that all relevant parties have agreed to take part in the pre-engagement process.

Equalities Summary

12. In our equalities statement prepared for the Criminal Legal Aid Review: An accelerated package of measures amending the criminal legal aid fee schemes, published in August 2020, we found when taken as an overall package, that the range of proposals we had suggested would have benefit for litigators and advocates across criminal legal aid by ensuring that we pay more fairly for work done.
13. This consultation only addresses pre-charge engagement and will therefore only address the potential impacts of this area. The other impacts have already been considered in the aforementioned consultation which can be found here.³
14. The new remuneration arrangements we are consulting on sets out a proposal to introduce a new fee for work associated with engagement with prosecution authorities at the pre-charge stage which will be designed and delivered against the statutory obligations under the Equality Act 2010.
15. The new fee for pre-charge engagement will not be directly or indirectly discriminatory within the meaning of the Equality Act 2010 Act.
- 16. There is no direct discrimination as we are not treating people differently on the basis of their protected characteristics. Additionally, there is no indirect discrimination because we do not believe that any people with protected characteristics are put at a particular disadvantage as a result of this policy proposal.**

³ Criminal Legal Aid Accelerated Area Equalities Statement - <https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/results/clar-consultation-equality-statement.pdf>

Methodology to Determine Discrimination Potential

17. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposals has been to identify the individuals whom the proposals would impact (the 'pool'), and then draw comparisons between the potential impacts of the proposals on those who share particular protected characteristics, with those who do not share those characteristics.

18. Guidance from the Equality and Human Rights Commission (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.

The Pool of Affected Individuals

Our proposals apply to police station funding and the primary pool of individuals affected will be legal practitioners who deliver criminal legal aid services. In this statement, we also refer to legal aid 'providers'. This refers to the firms who hold legal aid contracts.

19. Our proposal does not negatively impact clients. Additionally, as the proposed work is not means tested, there will be no requirement of a contribution from the client. We believe this proposal has other benefits for clients such as -
- Suspects who maintain their innocence will be aided by early identification of lines of inquiry which may lead to evidence or material that points away from the suspect or points towards another suspect.
 - Pre-charge engagement can help inform a prosecutor's charging decision. It might avoid a case being charged that would otherwise be stopped later in proceedings, when further information becomes available.
20. A more exhaustive list can be found in paragraph 16 of the consultation document.
21. Table 1⁴ below shows information about Legal aid clients by crime lower work area, for the financial year 2019–20.
22. Using existing evidence, we have considered the impact of these changes against the statutory obligations under the Equality Act 2010 detailed above to help us assess the impact of our proposals on the following protected characteristics: race, sex, disability, sexual orientation, religion, belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
23. We have looked at the characteristics of people benefitting from these policy changes using a range of existing sources such as analytical studies, government data and literature reviews.

⁴ Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2020> (Table found at Legal aid statistics England and Wales tables April to June , Table 11.2, Row 34)

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Table 1: Legal aid client diversity volumes broken down by crime lower work area, financial year total 2019–20

			Magistrates Court Representation	Police Station Advice	Prison Law	Advice & Assistance on Appeals	Civil Work Associated with Crime
Crime Lower							
Sex	Total		192,146	539,690	19,402	1,039	112
	Female		30,619	82,529	691	69	7
	Male		157,684	450,039	18,538	953	105
	Unknown		3,843	7,122	173	17	0
Ethnicity	Total		192,146	539,690	19,402	1,039	112
	BAME		26,844	95,384	4,404	234	19
	<i>Asian/Asian British</i>		6,721	29,176	720	57	0
	<i>Black/African/ Caribbean/Black British</i>		9,030	30,911	1,651	89	13
	<i>Mixed/multiple ethnic groups</i>		3,324	9,828	756	11	0
	<i>Other ethnic group</i>		7,769	25,469	1,277	77	6
	White		116,590	300,927	9,176	352	59
	Unknown		48,712	143,379	5,822	453	34
Disability	Total		192,146	539,690	19,402	1,039	112
	Yes		26,428	45,223	3,236	142	26
	No		104,643	324,017	9,321	346	34
	Unknown		61,075	170,450	6,845	551	52

Date of birth and thus client age band is not available for much of crime lower work including police station advice and age is therefore not shown

Data Sources

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

For practitioners:

- the Law Society data on all solicitors, 2019⁵
- the Chartered Institute of Legal Executives data on all legal executives, 2015⁶
- Legal Aid Agency (LAA) survey data on providers with legal aid contracts, 2015⁷

For clients:

- LAA data on clients collected through provider billing information, 2019–20⁸

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

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

26. While the LAA survey of providers did ask for information on disability, religion and sexual orientation, the number of respondents that disclosed this information was too low to make robust conclusions. We currently do not have sufficiently reliable practitioner data on disability, and we do not have sufficiently reliable practitioner, provider or client data on sexual orientation, religion or belief, pregnancy and maternity, marriage and civil partnership or gender reassignment. We are working with the Law Society to improve our equality data, which will inform our equality work going forward.

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

- Census data 2011
- Annual Population Survey 2020

⁵ Law Society statistics available at: <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2018/>

⁶ Chartered Institute of legal Executives available at: https://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity/diversity-statistics/cilex-membership-diversity

⁷ MoJ, Legal Aid Statistics in England and Wales: January to March 2015, available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-20156> MoJ, Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2019>

⁸ <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2020>

Monitoring and Evaluation

28. During the consultation period, we will engage with practitioners and seek their views on any equalities impacts.
29. Going forward, we will continue to monitor the equality impacts of these proposals. We will continue to pay 'due regard' to the Public Sector Equality Duty as the proposals are implemented and will consider the most effective ways of monitoring their equality impact

The demographics of legal practitioners and legal aid clients

30. Legal Practitioners:

- Data from The Law Society in Table 2 shows that in general the proportion of male and female solicitors is generally in line with the general population.
- In relation to ethnicity, it is difficult to draw conclusions from the data because of the high proportion (18%) who are 'unknown'.
- The proportion of legal executives that are female (74%) is larger than the proportion of other types of lawyer who are female, and the general population (51%).
- The proportion of legal executives who identify as BAME is broadly in line with the general population.

Table 2: Demographics for the whole legal profession, 2019–20⁹ 10 11

	Sex			Ethnicity		
	Male	Female	Unknown	White	BAME	Unknown
Solicitors	48%	52%	0%	68%	14%	18%
Legal executives	26%	74%	0%	86%	12%	1%
Annual Population Survey (2020)	49%	51%	0%	84%	15%	0%

31. Legal Aid Providers:

- While the demographics above relate to the legal practitioner market as a whole, we can also look more specifically at the demographics of legal aid practitioners within the publicly funded legal aid market.
- In January and February 2015, the LAA carried out an online survey to learn more about the providers doing legal aid work. The survey was sent to all 2,262 legal aid providers (across the entire legal aid market) to complete between 19 January and 27 February 2015. 644 providers completed the survey, a response rate of 28%. The survey asks about the protected characteristics of those who have ownership

⁹ Law Society statistics available at: <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2019/>

¹⁰ Chartered Institute of legal Executives available at: https://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity/diversity-statistics/cilex-membership-diversity

¹¹ Based on population between 16–64, so working age population. ONS Annual population survey data available at: <http://www.nomisweb.co.uk/query/select/>

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or managerial control of the firm (2,057 people), not all of the legal practitioners working at the organisations who responded (13,578).

- The information gathered through this survey indicated that in positions of managerial control, there was an overrepresentation of males when compared to the general population, as well as an overrepresentation of the age group 40–59.
- However, the limited response rate, the fact that the data asks only for the manager or head of the firm, and that the data spans the entire legal aid market significantly limits our ability to draw meaningful conclusions. The provider responses should be used only as an indication of the demographics of practitioners in the publicly funded legal aid market.

Overall summary of equality impacts

32. When considering the changes being made to pre-charge engagement, it is our view that these changes will benefit legal aid practitioners by better paying fairly for work done.
33. By the very nature of this policy proposal, legal aid practitioners will benefit from the delivery of these measures.
34. With the information available it is not possible to conclude how far there may be uneven impacts of these proposals. However we do not believe that any uneven impacts will result in any particular disadvantage for other practitioners who share a protected characteristic. This is because the proportionate increase in annual spend that they will receive does not represent any decrease to another group of practitioners. Therefore, we do not believe that these uneven impacts amount to indirect discrimination.

Eliminating unlawful discrimination, harassment and victimisation

Direct discrimination

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

Indirect discrimination

36. Our initial assessment **is** that these proposals are not indirectly discriminatory within the meaning of the Equality Act.

37. The key principal underpinning this policy proposal is to pay fairly for work done. The proposals for pre-charge engagement will impact legal aid practitioners. We know that for legal aid practitioners there is an almost even split in gender across this profession. However, in terms of ethnicity, recent data shows that 69% of solicitors identify as white, 14% identify as BAME and 18% fall into the category of unknown. It is still difficult to draw conclusions from the data on ethnicity because of the high proportion (18%) who are 'unknown'.

We know that 74% of legal executives are women and 26% are men. This number is not in line with the general population make up. However, we do not consider that the impact of these proposals will result in any particular disadvantage to any groups of legal aid practitioners who share protected characteristics. This is because the proportionate increase in annual spend that legal executive women will receive does not represent any decrease in funding to any other group of practitioners. Therefore, we do not think these uneven impacts will amount to indirect discrimination.

38. In summary, we believe there might be some uneven impacts of these policy proposals however as we do not consider any group of practitioners with a particular protected characteristic is put at a particular disadvantage, we consider there is no indirect discrimination. However, if there is any indirect discrimination, we consider it would be justified as a proportionate means of meeting the legitimate aim of paying more fairly for work done.

Harassment and victimisation

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

Advancing equality of opportunity

40. Consideration has been given to how these proposals will impact on the duty to advance equality of opportunity by meeting the needs of practitioners who share a particular characteristic where those needs are different from the needs of those who do not share that particular characteristic.
41. These proposals will ultimately, increase the proportionate spend on legal aid practitioners that will directly benefit women who disproportionately make up the number of legal executives.

Fostering good relations

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

Indirect discrimination: impact

43. This proposal will create positive financial impact for providers for all legal aid providers that work on pre-charge engagement. It should be noted that we have not been able to analyse impact by litigator type because we only hold data on the firms that carry out cases –rather than individual litigators.
44. We estimate that this new policy proposal will add approximately £0.3m to £1.8m annually to the legal aid fund. Additionally, we do not believe these changes will result in a reduction in funding to other groups who undertake criminal legal aid work.
45. We do not believe these uneven impacts will cause indirect discrimination.

Annex A: Practitioner and provider characteristics

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

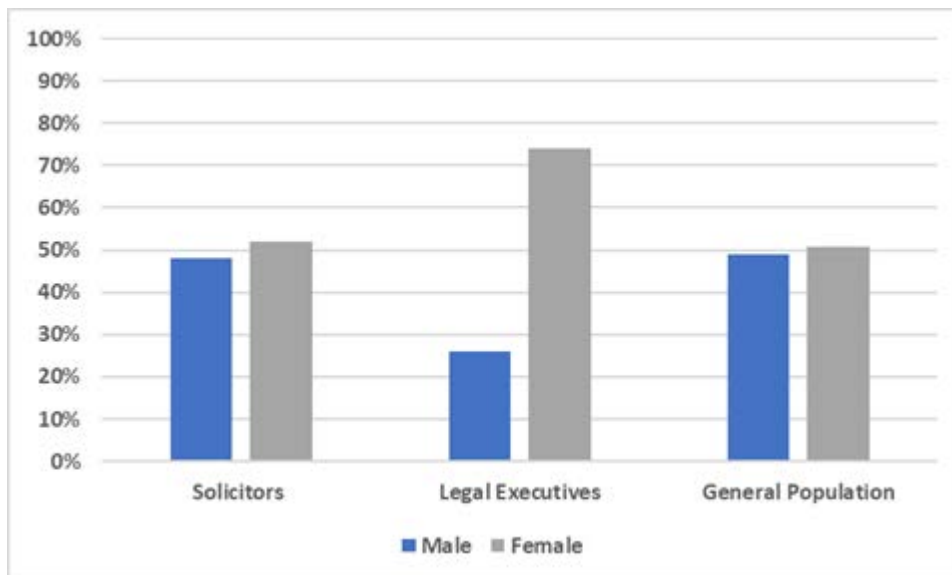
For the purpose of this consultation, we are paying particular attention to solicitors and legal executives.

Law Society and Chartered Institute of Legal Executives data

Sex

Legal executives are more likely to be female than male. The breakdown of solicitors by sex is generally in line with the general population (Figure 1)

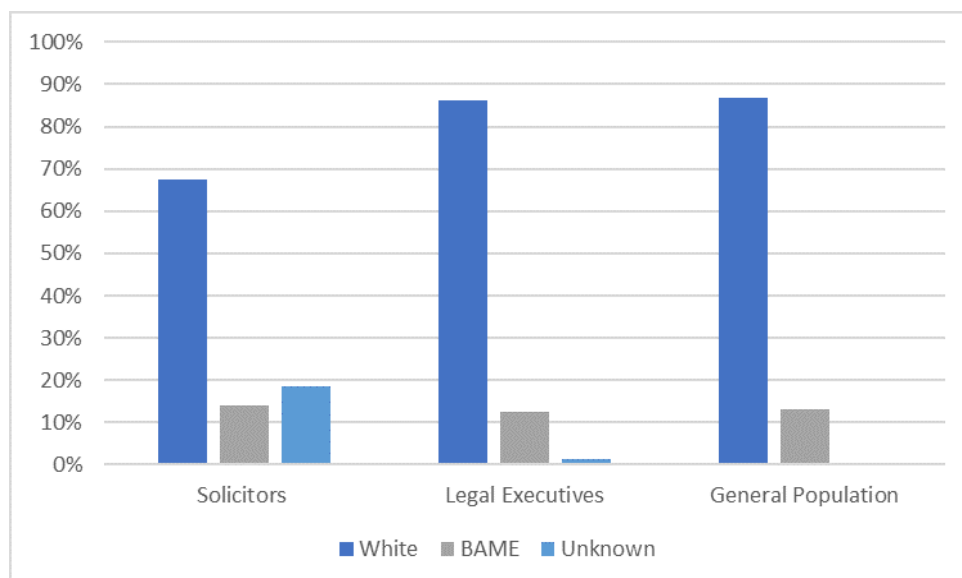
Figure 1: Proportion of lawyers by sex compared to the general population, 2019



Ethnicity

It is difficult to make firm conclusions from this data, because of the high proportion of people who did not disclose their ethnicity, but the statistics we do have indicate that the ethnic demographic of lawyers is broadly similar to that of the general population.

Figure 2: Proportion of lawyers by broad ethnic group, compared to the general population, 2019



Legal Aid Agency provider data

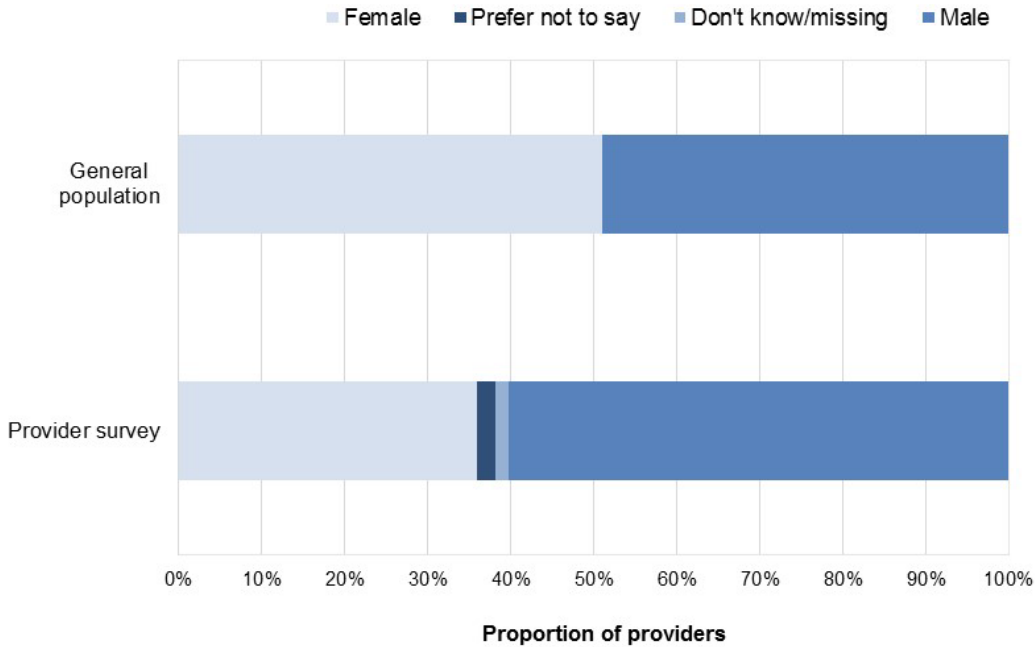
In January and February 2015, the LAA carried out an online survey to learn more about the providers doing legal aid work. The survey was sent to all 2,262 legal aid providers to complete between 19 January and 27 February 2015. 644 providers completed the survey, a response rate of 28%, this low response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

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

Sex

60% of respondents were male, compared to 49% among the general population (Figure 3). This may partly reflect the fact that employment rates are higher for men than women, especially over the age of 22.

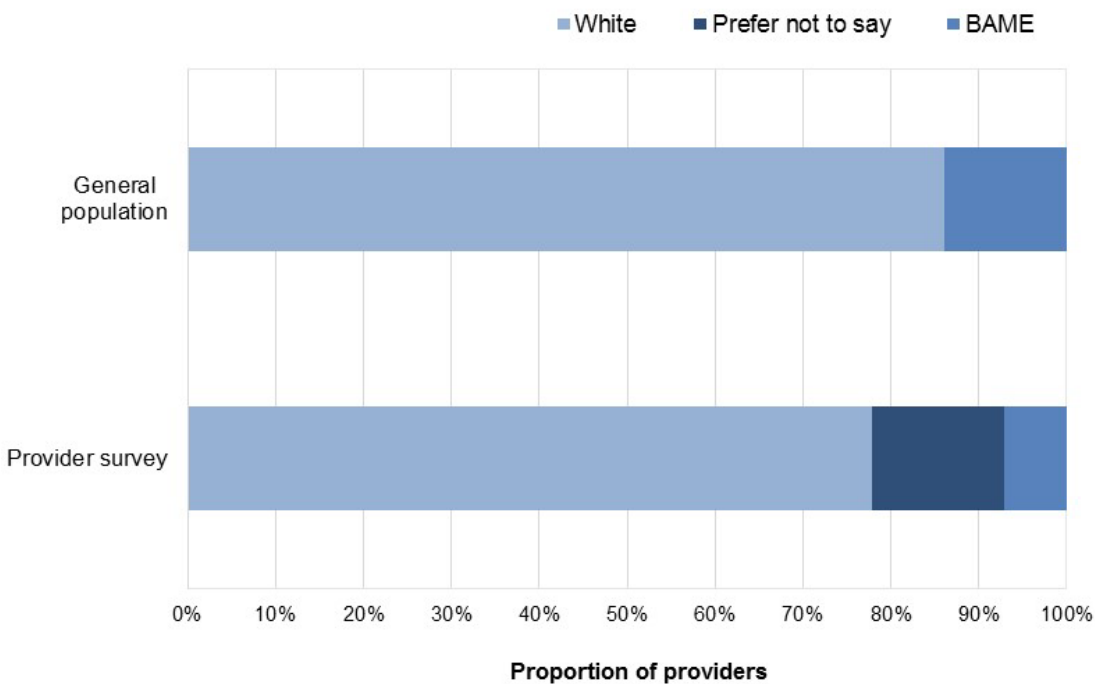
Figure 3: Proportion of responding providers by sex, compared to the general population, 2015



Ethnicity

The proportion of respondents who reported being of BAME backgrounds is broadly similar to the general population, at 15%, but 7% of respondents preferred not to answer this question (Figure 4).

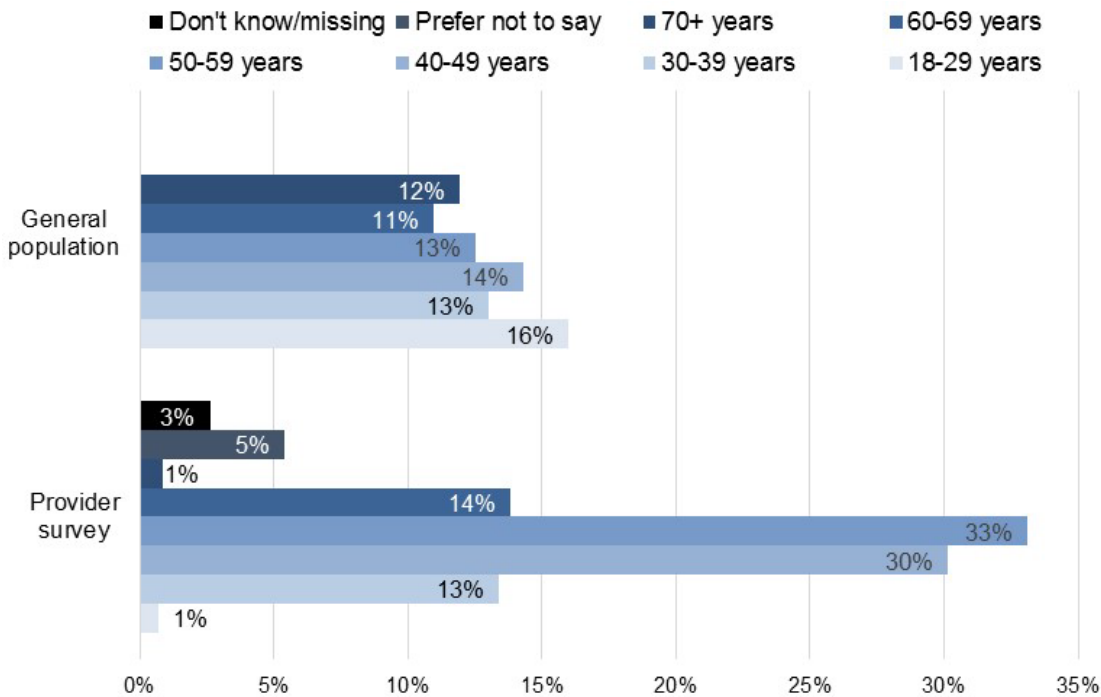
Figure 4: Proportion of responding providers by broad ethnic group, compared to the general population, 2015



Age

The majority of respondents to the survey were aged between 40 and 59 (63%), this is much higher than the general population where around a quarter of adults are in this age group (**Figure 5**).

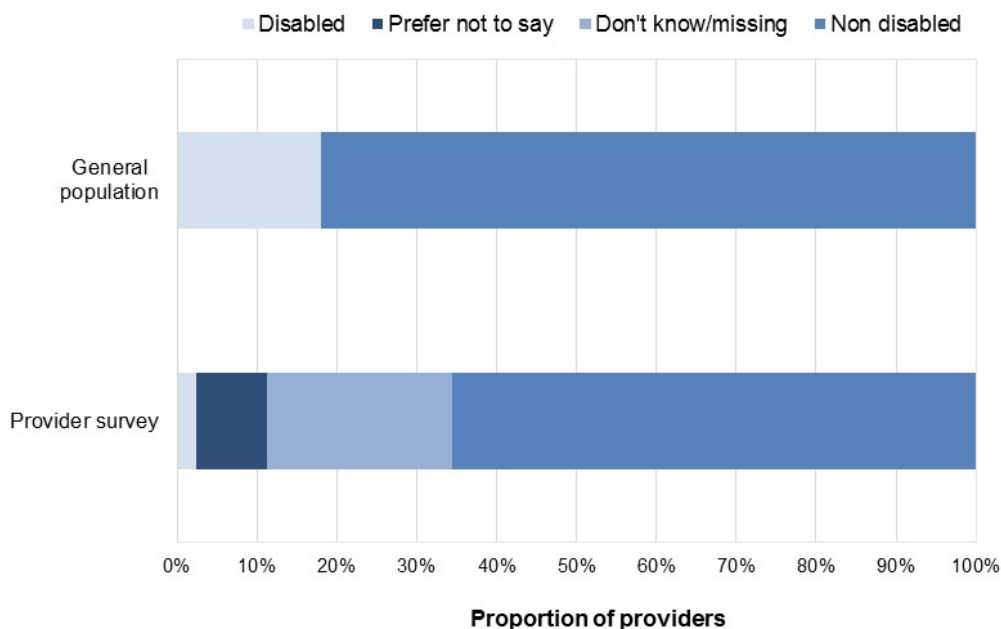
Figure 5: Proportion of responding providers by age group, compared to the general population, 2015



Disability

A large proportion (32%) of respondents did not declare their disability status (either prefer not to say or don't know/missing), so it is difficult to draw meaningful conclusions. Only 2% of respondents considered themselves to have a disability. This compares to 18% of the general population of England and Wales who stated they had a disability in the 2011 census. The labour market statistics show that disabled people are far less likely to be in employment than non-disabled people (**Figure 6**).

Figure 6: Proportion of responding providers by disability status, compared to the general population, 2015



Religion

As Figure 7 shows, a large proportion (43%) of respondents did not declare their religion (either prefer not to say or don't know/missing), which limits any interpretation of the result. However, the two largest groups in the sample were Christian (30%) and not religious (18%), these are also the two largest groups in the general population (**Figure 7**).

Figure 7: Proportion of responding providers by religion, compared to the general population

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

Sexual orientation

Figure 8 shows that nearly a quarter of respondents did not declare their sexual orientation (either prefer not to say or don't know/missing), which limits any interpretation of the result. Figures on sexual orientation for the general population are not available from the census data, however, other studies have estimated that about 2.2% of the general population are gay, lesbian or bisexual this is similar to the result of the survey, where about 2% of respondents said they were gay, lesbian or bisexual (**Figure 8**).

Figure 8: Proportion of responding providers by sexual orientation

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

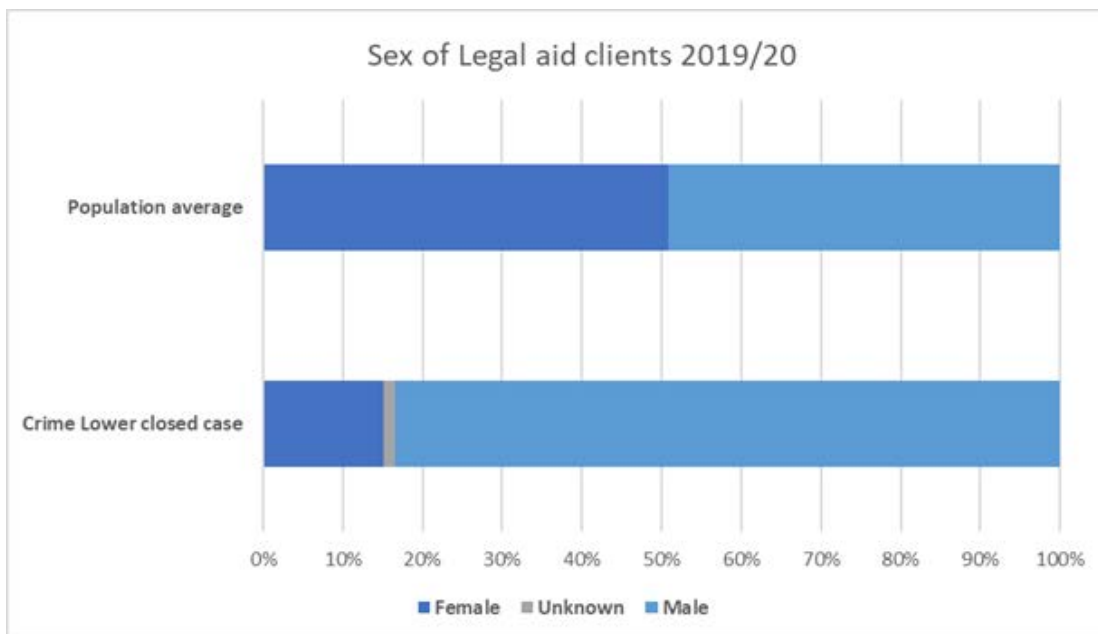
Annex B: Client characteristics

These charts show the breakdown of crime lower legal aid client characteristics compared with the national breakdown from the latest population estimates from the Office for National Statistics (Census 2011 and Annual Population Survey 2020).

Sex

The profile of criminal legal aid clients differs from the general male population (49%) with a much greater proportion of male clients (83%). This reflects the picture across the criminal justice system and has been consistent throughout all the years for which we have data.

Figure 9: Sex of Legal aid client, by crime lower closed claims 2019/20¹²

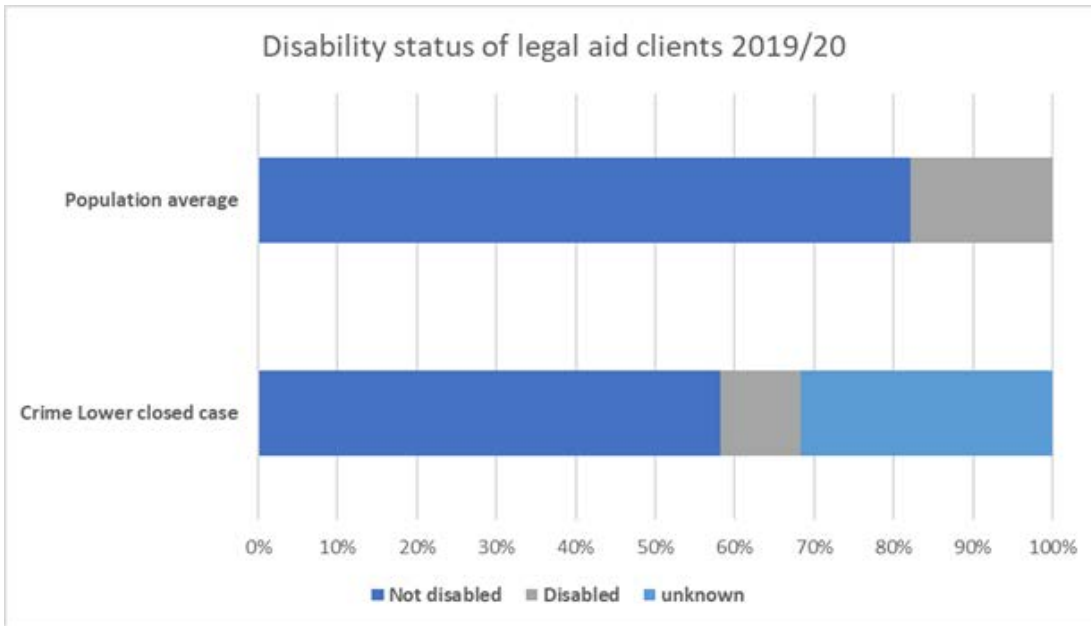


¹² The closed case/claims measure relates to work completed in the specified period, even where a portion of the work may have taken place over previous periods.

Disability

Figure 10 shows the proportion of legal aid clients who consider themselves to have a disability.

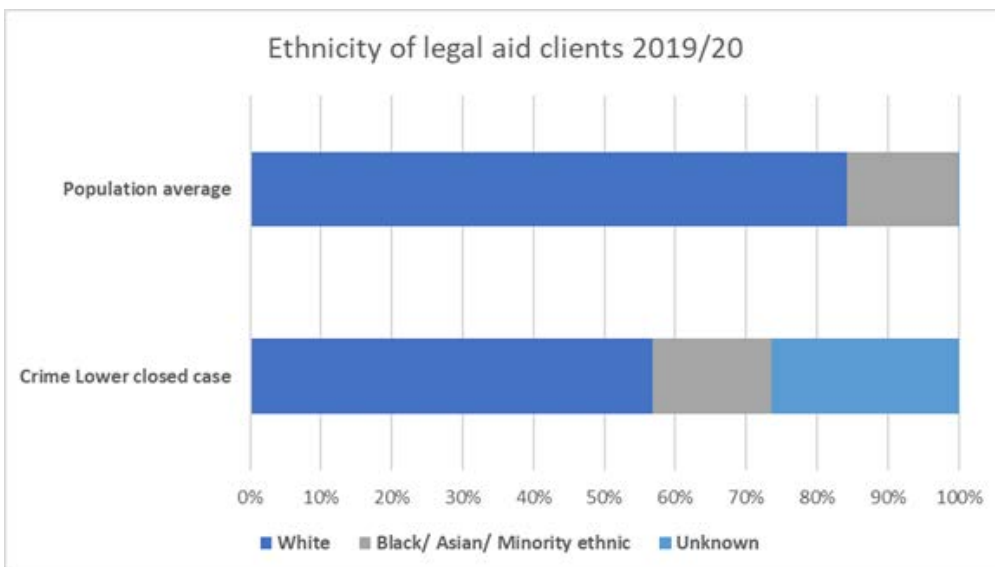
Figure 10: Disability status of legal aid clients, by crime lower closed case 2019/20



Ethnicity

Figure 11 compares the proportion of legal aid clients who are from black and minority ethnic (BAME) origins with the general population. It is difficult to draw firm conclusions from this comparison because of the relatively high proportion for which ethnicity is unknown. The overall ethnic profile of legal aid clients in 2019–20 was similar to that in 2018–19.

Figure 11: Ethnicity of legal aid clients by crime lower closed case 2019/20





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