



Ministry
of Justice

Equality Statement

Government's response to the Criminal Legal Aid Independent Review consultation

Policy Summary

1. This Equality Statement has been written to be read alongside the government's response to the consultation on the Criminal Legal Aid Independent Review, to which this statement is annexed.
2. This Statement covers the impact of the changes outlined in the government's interim response to the consultation, which will add an estimated £115m p.a. together with the changes that the government has announced on longer-term reform via its full consultation response. Some of the proposals we have announced have yet to be fully worked through. As such, it is too early to draw conclusions about their impact, which will be considered as we work up options for consultation.
3. In July 2022, the government published its interim response to the CLAIR, which included policies to be implemented on cases with a representation order date² from 30 September 2022 onwards. These policies cover most areas of criminal legal aid and can be summarised as follows:
 - General uplift of 15% to expert, police station, magistrates', other Crime Lower, Advocates' Graduated Fee Scheme (AGFS), Very High Cost Cases (VHCC) for Solicitors and the Court of Appeal fee schemes;
 - Pre-charge Engagement (PCE) - ensure that solicitors are appropriately remunerated for preparatory work, which will be brought within the scope of legal aid;
 - Litigators Graduated Fee Scheme (LGFS) – Uplifts of 15% to LGFS basic fees, fixed fees and hourly rates; and
 - Elected Either Way Guilty Plea Fixed Fee - abolish the fixed fees, to increase the fees to those paid under the usual LGFS and AGFS.

An Impact Assessment¹ was published alongside the government's interim response to CLAIR² and the consultation on the associated policy proposals. This IA estimated the additional steady state spend of these policies to be between £95m and £115m per annum. The range reflects the volume of work done. The lower end of the range is based on the volumes and mix of claims in 2019-20 (the most recent caseload prior to Covid-19), whilst the higher end is based on the expected/projected volumes of claims in 2024-25. These 2024-25 volumes include the projected increase in volumes due to an increase in sitting days and police numbers. Taken together, these should reflect the overall impact both in the short-term and that we expect to see in the future.

4. Following further discussions with stakeholders, as set out in the accompanying full consultation response, the MoJ proposed additional funding for criminal barristers and solicitors' firms, mainly centred around the cases in the Crown Court backlog that would not be eligible under the aforementioned uplifts.
5. This Equality Statement accompanies the government's full response to the consultation on CLAIR.
6. It also addresses the impact on people with protected characteristics in relation to the specific measures contained in the Statutory Instrument that was laid in Parliament in July 2022 and came into force on 30 September 2022 as set out in the government's interim response to the consultation.

Equality Duty

7. Section 149 of the Equality Act 2010 ('the 2010 Act') requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act;
 - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
 - foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
8. Paying 'due regard' needs to be considered against the nine 'protected characteristics' under the 2010 Act – namely race, sex, disability, sexual orientation, religion and belief, age, gender reassignment, marriage and civil partnership (in respect of the first limb above) and pregnancy and maternity.

Methodology to determine discrimination potential

9. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the measures has been to identify the individuals whom the changes will impact (the 'pool'), and then draw comparisons between the

¹ [Impact Assessment template \(justice.gov.uk\)](https://www.justice.gov.uk/impact-assessment-template)

² [Criminal Legal Aid Review \(justice.gov.uk\)](https://www.justice.gov.uk/criminal-legal-aid-review)

potential impacts of the changes 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 measures (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

11. As the changes apply to both crime lower work and crime higher work, the primary pool of individuals affected will be legal practitioners who deliver criminal legal aid services. Practitioners can broadly be categorised as:

- Litigators (including solicitors, legal executives and accredited police station representatives); and
- Advocates (including barristers and solicitor advocates).

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

13. We have also identified legal aid clients who could be particularly affected by these changes. However, because of the limited number of clients affected, we don't have the data to reliably model the impact.

14. Crown Court defendants were identified as a group that could be particularly impacted by these measures financially, because a small number of Crown Court defendants who are required to contribute to the cost of their Crown Court case because of their higher incomes may find that the cost of that contribution increases if fees are increased following consultation.

Data sources

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

For practitioners:

- Summary Information on Publicly Funded Criminal Legal Services, (the “Data Compendium”) (DC), published by MoJ in February 2021,³
- Chartered Institute of Legal Executives’ (CILEX) and CILEX Regulation’s joint submission to the Independent Review into Criminal Legal Aid, and;

For clients:

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960290/data-compendium.pdf. Please note the data compendium covers the period April 2014 – March 2015 to April 2018 – March 2019 when it refers to fee income paid for the work undertaken by solicitors and April 2015 – March 2016 to April 2019 – March 2020 for fee income paid to barristers.

- LAA data on clients collected through provider billing information, 2021-22⁴.
16. We have used data from the Data Compendium that shows the gender, ethnicity, sex and age of barristers and solicitors (including duty solicitors). We have drawn upon the Chartered Institute of Legal Executives' (CILEX) and CILEX Regulation's joint submission to the Independent Review of Criminal Legal Aid to show gender, ethnicity and age of CILEX members who are both educated in and working on criminal practice.
 17. 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, marriage and civil partnership (in respect of the first limb above), pregnancy and maternity or gender reassignment. The consultation responses did not provide specific data on this.
 18. Where relevant, we have used Census data⁵ to compare the demographics of clients and practitioners against the general population. The first set of results from the 2021 Census were released at the end of June 2022. However, the age split currently available for the 2021 Census do not match up with that of the LAA client data. Therefore, Census 2011 data has been used instead for age comparisons. In addition, since information on disability and ethnicity have not been released yet for the 2021 Census, 2011 Census data has been used for this comparison. 2021 Census data has been used when comparing the gender of clients and practitioners with the general population.
 19. Given that the information on disability, ethnicity and age is based on the 2011 Census, we considered using the Annual Population Survey 2019/20 as an alternative. However, we decided against it (please see footnote⁶ for details).

Monitoring and evaluation

20. Going forward, we will continue to monitor the equality impacts of these measures.
21. We will continue to pay 'due regard' to the Public Sector Equality Duty as the measures are implemented and will consider the most effective ways of monitoring equalities impacts.

The demographics of criminal legal aid practitioners and criminal legal aid clients

Criminal Legal Aid Practitioners

⁴ MoJ, Legal Aid Agency figures available at: [Legal aid statistics: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2022)

⁵2011 ONS Census data is available at: <https://www.ons.gov.uk/census/2011census/2011censusdata>. And 2021 ONS Census data is available at: [First results from Census 2021 in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/statistics/census/2021/first-results-from-census-2021-in-england-and-wales)

⁶ We compared the Census 2011 against the Annual Population Survey 2019-20 and the distribution by ethnicity and disability was very similar. Therefore, given the similarities in distribution, we have used the Census 2011 information for these comparisons (ethnicity and disability) for consistency as census data is used elsewhere. Regarding age, the Annual Population Survey data does not match the age brackets used by the Legal Aid Agency statistics on legal aid clients. Therefore, Census 2011 data was also used for age comparisons.

Barristers⁷:

22. **Gender:** The Data Compendium showed that there were 3,680 barristers who completed any level of public criminal work in 2019-20. Of these, 66% were male and 33% female. Among the total population of barristers⁸, in 2021 60% were male, 38% female and 1% either preferred not to say or no information was provided. Comparing instead against the general population, of the split is 49% male and 51% female (Census 2021). However, it's worth noting that the gender split varies by years of practice. Table 2 below demonstrates that among those with few years of practice, the gender split is much more even compared to groups of barristers with more practising experience. For instance, for barristers with 0-2 years of practise, 48% were male and 52% female. This contrasts with barristers who had 28+ years of practise; where 87% of these were male and 12% female.

Table 1: Gender of barristers doing any public criminal work in 2019-20

Gender	Number/ percentage of barristers
Number of barristers	3,680
Male	66%
Female	33%
Prefer not to say/ no information	1%
All	100%

Table 2: Gender of criminal barristers by years of practise

Years of practise	Number of criminal barristers	Male	Female	No information	All
0 to 2	502	48%	52%	0%	100%
3 to 7	598	54%	46%	1%	100%
8 to 12	284	63%	36%	1%	100%
13 to 17	494	60%	39%	1%	100%
18 to 22	497	66%	32%	2%	100%
23 to 27	485	74%	26%	0%	100%
28+	820	87%	12%	0%	100%
All	3,680	66%	33%	1%	100%

23. **Age:** Table 3 shows that there were a very small number of barristers under the age of 25, who completed public criminal work in 2019-20. Around 20% of criminal barristers were aged 25-34, around a quarter were aged 35-44 and around another quarter were aged 45-54. 16% were aged 55+. This age distribution broadly resembles that for all barristers⁹.

Table 3: Age distribution of barristers doing any public criminal work in 2019-20

Age range	Number/ percentage of barristers
Number of barristers	3,680

⁷ The Information in this section on barrister characteristics is collected each year by the Bar Standards Board as part of the Authorisation to Practise process, and is shared with the Bar Council

⁸ [Statistics on practising barristers \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/statistics-on-practising-barristers)

⁹ [Statistics on practising barristers \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/statistics-on-practising-barristers)

Under 25	1%
25-34	20%
35-44	23%
45-54	26%
55-64	12%
65+	4%
No information	14%
All	100%

24. **Ethnicity:** Table 4 below shows that 81% of criminal barristers were white, 6% were Asian/ Asian British, 3% were mixed race and a further 3% were black/ African/ Caribbean/ Black British. Excluding those for whom information on ethnicity was not available, the proportion of criminal barristers who were white was 86%, which matches that in the general population (86%, Census 2011).

Table 4: Ethnicity distribution of barristers doing any public criminal work in 2019-20

Ethnicity	Number/ percentage of barristers
Number of barristers	3,680
White	81%
Asian/ Asian British	6%
Mixed/ multiple ethnic group	3%
Black/ African/ Caribbean/ black British	3%
Other ethnic group	1%
Prefer not to say/ no information	6%
All	100%

25. **Disability:** Table 5 shows that there was a high non-response rate of 50%, and so information related to disability is not as robust as compared to the information above on age, gender and ethnicity. Notwithstanding that, the vast majority of criminal barristers who responded with a yes/no answer declared that they did not have a disability. This contrasts significantly with the general population, where 18% classified themselves as disabled (Census 2011).

Table 5: Disability status of barristers doing any public criminal work in 2019-20

Disability status	Number/ percentage of barristers
Number of barristers	3,680
No	48%
Yes	2%
Prefer not to say/ no information	50%
All	100%

Litigators:

26. The Data Compendium shows that there were just under 12,000 solicitors working for Criminal Legal Aid (CLA) firms in 2018-19.^{10,11} However, it is important to highlight that information was not available on how many of them worked on CLA related cases.

¹⁰ The Data compendium includes data from 2014-15 to 2018-19.

¹¹ We define CLA firms as those solicitors firm that received criminal legal aid fee payment during that year.

Table 6 (Table 2.1 in DC): Total number of Practising Certificate holders

	2014-15	2015-16	2016-17	2017-18	2018-19
PC holders	133,370	136,190	139,620	143,170	145,530
Solicitors who worked for CLA firm*	14,790	12,710	12,530	13,140	11,760

* A very small proportion of these (<1%) were not reported as being a PC holder, however as they were identified as working for a CLA firm they are included.

27. **Gender:** Their gender split closely matched that in the general population (Census 2021). However, whereas female solicitors made up more than 50% of those under the age of 45, they made up less than 50% in older groups, with female solicitors accounting for one in three among those between the age of 55 and 64.

Table 7 (Table 2.2 in DC): Solicitors working for CLA firms by gender

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
Female	47%	48%	49%	49%	51%
Male	52%	51%	50%	50%	49%
Unknown	1%	0%	1%	1%	1%
All	100%	100%	100%	100%	100%

Table 8 (Table in 2.5 DC): Solicitors working for CLA firms by age and gender, 2018-19

	Number of solicitors	Female	Male	Unknown
Under 25	~	~	~	~
25-34	2,360	69%	28%	3%
35-44	3,500	62%	38%	~
45-54	2,980	45%	55%	~
55-64	2,060	33%	67%	~
65+	860	14%	86%	~
All	11,760	51%	49%	1%

28. **Ethnicity:** solicitors from ethnic minority backgrounds accounted for 22% of those with known ethnicity in CLA firms. This compared to 14% in the general population (Census 2011) and 17.5% amongst all PC holders (Law Society 2019 Statistical Report).

Table 9 (Table 2.6 in DC): Solicitors working for CLA firms by ethnicity

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
African-Caribbean	1%	1%	1%	1%	1%

Asian	10%	11%	12%	11%	12%
Chinese	0%	0%	0%	1%	0%
African	2%	2%	2%	2%	2%
Other ethnic origin	2%	2%	2%	2%	2%
White European	74%	73%	70%	68%	67%
Unknown	10%	10%	12%	15%	15%
All	100%	100%	100%	100%	100%
Ethnic minority solicitors as a percentage of all solicitors working for CLA firms	16%	17%	18%	17%	18%
Ethnic minority solicitors as a percentage of all solicitors working for CLA firms with known ethnicity	18%	19%	20%	20%	22%

29. Solicitors from ethnic minority backgrounds were more likely to work in smaller CLA firms (firm size defined by number of partners) and they had higher representation in CLA firms that mainly did CLA work.

Table 10 (Table 2.22 in DC): Solicitors working for CLA firms by ethnicity and firm size, 2018-19

	Number of solicitors	Very small	Small	Medium	Large
African-Caribbean	140	17%	46%	22%	15%
Asian	1,420	19%	50%	18%	13%
Chinese	50	~	44%	31%	>20%*
African	260	29%	49%	13%	9%
Other ethnic origin	270	14%	40%	26%	20%
White European	7,830	7%	38%	37%	18%
Unknown	1,790	9%	37%	33%	21%
All	11,760	10%	40%	33%	17%

* The percentage eligible for secondary suppression in this table has been replaced by ">20%", to indicate its actual value is at least 20%. This has been completed to help mitigate potential disclosure risks without omitting a large amount of data in the table

Table 11 (Table 2.26 in DC): Ethnic minority solicitors as a percentage of solicitors working for CLA firms by specialisation, 2018-19

	Average	Mostly criminal work	Some criminal work	No or little criminal work
Ethnic minority solicitors as a percentage of all solicitors working for CLA firms	18%	25%	16%	15%
Ethnic minority solicitors as a percentage of all solicitors working for CLA firms with known ethnicity	22%	29%	19%	18%

30. Although diversity improved steadily between 2014-15 to 2018-19 and that this increased diversity gradually fed through senior levels, female and Ethnic minority solicitors were still under-represented among partners in CLA firms by 2018-19.

Table 12 (Table 2.14 in DC): Solicitors working for CLA firms by position in the firm and gender, 2018-19

	Number of solicitors	Female	Male	Unknown
Partners	3,520	32%	67%	~
Others	8,250	58%	41%	1%
All	11,760	51%	49%	1%

Table 13 (Table 2.18 in DC): Percentage of Ethnic minority solicitors by position in the firm, 2018-19

	Average	Partners	Other
Ethnic minority solicitors as a percentage of all solicitors working for CLA firms	18%	17%	19%
Ethnic minority solicitors as a percentage of all solicitors working for CLA firms with known ethnicity	22%	19%	23%

31. **Age:** Finally, broadly the age distribution of solicitors working in CLA firms in 2018-19 resembled that of the whole solicitor population (2019 Law Society Statistical Report), with middle age groups (35 to 54) concentrating more solicitors than younger and older groups. However, honing in on the younger age group (25-34), over time there does appear to be a reduction of this cohort which points towards an older workforce compared to that in the general solicitor population¹².

Table 14 (Table 2.3 in DC): Solicitors working for CLA firms by age

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
Under 25	~	~	~	~	~
25-34	25%	22%	22%	22%	20%
35-44	29%	30%	29%	29%	30%
45-54	24%	25%	25%	25%	25%
55-64	16%	17%	17%	16%	17%
65+	~	~	~	~	~
All	100%	100%	100%	100%	100%

32. As mentioned, the figures above refer to solicitors who worked for CLA firms, regardless of whether they carried out CLA work. For this reason, it is also useful to look into a subgroup of these solicitors, duty solicitors, who we know work on CLA cases.

¹² Based on own calculation using 2019 Law Society Statistics Report, table 2.4.

33. **Age:** The data compendium shows that there were 4,600 duty solicitors in 2019. Of these 4,360 were matched to Law Society records and therefore additional information was available for these individuals. Like all solicitors working in CLA firms, middle-aged groups tend to concentrate more duty solicitors than younger and older groups. Also, like the population of solicitors working for CLA firms, the age distribution of duty solicitors points towards an older workforce than the general population of solicitors.
34. **Gender:** The gender parity achieved at the wider CLA solicitor level does not feed through to duty solicitors, where around 65% of duty solicitors were male and this percentage remained almost unchanged over the three-year period.

Table 15 (from Table 4.1 in DC): Number of duty solicitors on the rota by year

	2017	2018	2019
Number of duty solicitors ¹³	5,240	4,990	4,600

Table 16 (Table 4.3 in DC): Proportion of duty solicitors by age, 2017-2019*

	2017	2018	2019
Number of duty solicitors	4,990	4,740	4,360
Under 25	0%	0%	0%
25-34	12%	11%	9%
35-44	29%	29%	29%
45-54	33%	34%	34%
55-64	19%	19%	21%
65+	6%	7%	8%
All	100%	100%	100%
Average age**	47	48	49

Table 17 (Table 4.2 in DC): Proportion of duty solicitors by sex, 2017-2019

	2017	2018	2019
Number of duty solicitors	4,990	4,740	4,360
Female	36%	36%	35%
Male	64%	64%	65%
All	100%	100%	100%

Legal Executives:

35. Finally, it is also worth pointing out that, according to the CILEX and CILEX Regulation's joint submission to CLAIR, 1,287 CILEX members were working in criminal practice. Of them:

- two thirds are females, which is a lower percentage than among all CILEX members but higher than the percentage of women in the general population (51%, Census 2021);

¹³ These values are from the LAA duty solicitor rotas. The 2017-18 numbers come from a 3-month rota whilst the 2018-19 and 2019-20 number came from 6-month rotas.

- 17% identified themselves as ethnic minority – a higher percentage than among all CILEX members and higher than in the general population (14%, Census 2011);
- 7% have disability, compared to 4% among all CILEX members and 18% among the general population (Census 2011); and
- their average age was 44, compared to 41 among all CILEX members.

Criminal legal aid clients:

36. LAA's annual data¹⁴ on characteristics of Crime Lower¹⁵ and Crime Higher¹⁶ clients has been used to inform equality considerations where it is considered that defendants who share a particular protected characteristic are likely to be affected. To the extent that the pre-charge engagement policy and increased fees for crime lower work could improve case progression for Crime Lower, this section considers the demographics of both Crime Lower and Crime Higher clients.
37. Table 18 below suggests defendants in both Crime Lower and Crime Higher are much more likely to be male compared to the general population. Defendants are also more likely to be from ethnic minority backgrounds than the general population. Finally, Table 19 shows that around half of the Crime Higher and Crime Lower clients are in the 18-34 age group, this compares to around 20% for the general population.
38. Table 18 also suggests that the proportion of Crime Higher clients with a disability (29%) is higher than that observed in the general population (18%). Conversely, for Crime Lower clients, disability (15%) appeared to be slightly less prevalent than in the population as a whole (18%). The impacts on defendants are discussed further under 'Indirect discrimination'.
39. A small number of respondents to the consultation mentioned the proposal to not uplift the prison law fees and the fact that individuals from ethnic minority backgrounds are over-represented in the prison population. However, the Government is not planning to reduce fees in prison law. In line with CLAIR's recommendation and considering the limited funds available, the Government is prioritising investment towards the front-end of the system. Moreover, Government is increasing fees by £115m pa which will ensure legal aid clients, amongst whom individuals from ethnic minority backgrounds are over-represented, benefit from a better-functioning and more sustainable legal aid market that provides a good quality service.

¹⁴ Crime Lower data is on a closed case basis except for age, which is taken from MAAT and uses granted applications. Crime Higher data is all based on granted applications.

¹⁵ Crime Lower comprises legal advice provided to suspects before and after they have been charged, advice and representation for defendants in magistrates' courts, and prison law.

¹⁶ Crime Higher includes legal representation in the Crown Court and Higher Courts (Court of Appeal, Senior Courts Office, and the Supreme Court).

Table 18: Demographics of Legal Aid Clients (Crime Lower and Crime Higher) 2021-22¹⁷ compared to general population¹⁸

	Female	Male	Ethnic minority	White	Disability	No disability
Crime Lower	15%	85%	24%	76%	15%	85%
Crime Higher	9%	91%	21%	79%	29%	71%
General Population	51%	49%	14%	86%	18%	82%

Table 19: Age Distribution of Legal Aid Clients (Crime Lower and Crime Higher) 2021-22¹⁹ compared to general population²⁰

	Under 18	18-24	25-34	35-44	45-54	55-64	65+
Crime Lower	8%	16%	32%	27%	13%	4%	1%
Crime Higher	3%	24%	34%	22%	11%	5%	2%
General population	21%	9%	13%	14%	14%	12%	16%

Overall summary of equality impacts

40. When taken as an overall package, it is our view that these measures will benefit providers across criminal legal aid by ensuring that we pay more fairly for work done. According to the CLAIR focus groups, poor pay affects minority groups and women in particular. Therefore, increasing fees will go some way to address these issues. The changes to pre-charge engagement and increased fees for crime lower and higher work could speed up case progression for the benefit of clients. The decision to fund an increase in police station fees, rather than introduce training grants, will benefit all criminal legal aid solicitors and accredited representatives, including those with protected characteristics, rather than a small proportion who might have benefitted from training grants, which might have had more of an impact on solicitors with protected characteristics. Increased police station funding may have a benefit for clients with protected characteristics if cases conclude earlier and/or they get a better outcome due to the improved quality of advice.

41. Some legal aid practitioners will benefit more than others from the delivery of all these changes. In addition, it is possible that the legal aid practitioners who particularly benefit from the measures might be more likely to share a protected characteristic. However, we do not believe that these potential uneven impacts

¹⁷ 2021-22 demographic data on legal aid clients from MoJ, Legal Aid Agency figures available at [Legal aid statistics: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2022). Note, figures have been adjusted to exclude those for whom this information was not available or was unknown.

¹⁸ Figures on ethnicity and disability are not available yet for the 2021 Census. Therefore, the figures in the table on ethnicity and disability for the general population are based on Census 2011. Information relating to sex is based on Census 2021.

¹⁹ 2021-22 demographic data on legal aid clients from MoJ, Legal Aid Agency figures available at: [Legal aid statistics: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2022)

²⁰ Census 2011 has been used since the age categories in the Census 2021 data released so far do not match those in the LAA client data. However, it appears that, in broad terms, the age distribution of the general population has not changed significantly between the two Censuses.

will result in any particular disadvantage for any other groups of practitioners who share a protected characteristic. This is because the proportionate increase in annual spend that they will receive does not represent any decrease to another group of practitioners. Therefore, we do not believe that these uneven impacts amount to indirect discrimination.

42. The increase in fees mean that legal aid costs will rise, when compared to current levels. As such, particular groups of defendants may be required to make higher contributions towards their legal aid costs than under the current fee schemes. Given the lack of available data, we have been unable to undertake detailed analysis of the impacts of these measures on the contributions defendants are required to pay. However, we know that annually, about 8,000 to 9,000 defendants at the Crown Court are required to pay an income contribution order (ICO). In many cases, the income contributions did not meet the current full defence costs of the case and therefore, in these cases, the client's income contributions will not be affected by an increase in fees. Approximately 1,500 to 2,000 capital contribution orders (CCOs) are also issued each year, representing between 2% and 3% of the legally aided population at the Crown Court, and with an average value of £15,000. As such, we anticipate that these measures are only likely to affect only a small proportion of individuals and with a maximum increase of 15%. The equalities data that we hold for all crime higher defendants does not separately identify those required to make a contribution. Consequently, we are unable to assess the equality impact of this measure.
43. However, since the contribution levels are subject to means testing²¹ and are intended to recuperate a proportion of the cost of providing legal aid services, we consider any differences in impact are proportionate to the legitimate aim of paying fairly for work done. In respect of income contributions, there is a cap to the maximum income contribution individuals can be asked to contribute for their legal aid costs. This will assist in mitigating any rises in legal aid costs to individuals as a part of the changes made to the scheme. Overall, we consider that the impact on defendants that pay legal aid contributions will be limited.
44. A small number of respondents to the consultation mentioned the proposal to not uplift the prison law fees and the fact that individuals from ethnic minority backgrounds are over-represented in the prison population. However, the Government is not planning to reduce fees in prison law and therefore we do not consider this proposal will have a detrimental impact on the current level of service provision. In line with CLAIR's emphasis on early case resolution and considering the limited funds available, the Government is prioritising investment towards the front-end of the system. Moreover, Government is increasing fees by £115m pa which will ensure legal aid clients, amongst whom individuals from ethnic minority backgrounds are over-represented, benefit from a better-functioning and more sustainable legal aid market that provides a good quality service. Additional measures announced in the Government response will be the subject of a further Equality Statement once detailed proposals have been developed.

²¹ Criminal legal aid contributions and means test thresholds were considered more broadly as part of the Means Test Review.

Eliminating unlawful discrimination, harassment and victimisation

Direct discrimination

45. Our assessment is that each of these measures are not directly discriminatory within the meaning of the Equality Act.

Indirect discrimination

46. The key principle underpinning the changes is paying more fairly for work done. We do not consider that the impact of these measures will result in any particular disadvantage to any other groups of legal aid practitioners who share protected characteristics. This is because the proportionate increase in annual spend that all practitioners will receive does not represent any decrease in funding to any other group of practitioners. Therefore, we do not think these uneven impacts will amount to indirect discrimination.

47. These changes may have a disproportionate impact on a small number of clients (Crown Court defendants) who are required to make a contribution to their defence costs. We recognise that Crown Court defendants are more likely to be male, from an ethnic minority background and in the 18 to 35 age group than the general population.

48. Defendants who are financially eligible for legal aid in the Crown Court may be required to pay an income contribution towards the cost of their defence. Income contributions are refunded in the event of the defendant's acquittal while, if convicted, the defendant may be liable to pay towards their defence costs from their capital assets. An increase in legal aid will lead to increased costs which, in turn, might increase the contributions individuals are required to make. There is a cap to the maximum income contribution individuals can be asked to contribute for their legal aid costs. This will assist in mitigating any rises in legal aid costs to individuals as a part of the changes made to the scheme. Overall, we consider that the impact on defendants that pay legal aid contributions will be limited. To the extent that a group with any particular protected characteristic is affected more than others, we consider that this will mitigate the impact. Further, we consider that these measures are a proportionate means of achieving a legitimate aim, and therefore do not amount to unlawful indirect discrimination.

49. A small number of respondents to the consultation mentioned the proposal to not uplift the prison law fees and the fact that individuals from ethnic minority backgrounds are over-represented in the prison population. However, the Government is not planning to reduce fees in prison law and therefore we do not consider this proposal will have a detrimental impact on the current level of service provision. We consider that any indirect impacts on a cohort with particular protected characteristics in the prison population is a proportionate means of achieving a legitimate aim because in line with CLAIR's emphasis on early case resolution and considering the limited funds available, the Government is prioritising investment towards the front-end of the system.

50. In summary, we recognise that there might be some uneven impacts as a result of these measures. However, where the impacts are uneven the measures represent a proportionate approach to achieving our legitimate objective – to pay more fairly for work done. If any disadvantages do materialise or if there was to be a disproportionate effect on a particular group, our conclusion remains the same, that this will be justified as a proportionate means of meeting the legitimate aim of paying more fairly for work done.

Harassment and victimisation

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

Advancing equality of opportunity

52. Consideration has been given to how these measures 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.

53. As set out above, the decision to fund an increase in police station fees rather than introduce training grants may disproportionately benefit males over females because of the distribution of duty solicitors.²² However, we consider that this is justified, because only a small proportion of solicitors might have benefitted from training grants. Fee increases across the board may assist with equality of opportunity.

54. The Ministry of Justice (MoJ) is mindful of the need to encourage those with protected characteristics to participate in public life and the need to advance equality of opportunity generally. The independently-led review looked at the sustainability of the market – and diversity was a part of that.

Fostering good relations

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

Indirect discrimination: impact

56. We do not believe that any change in increased funding will cause a disadvantage to any other group with protected characteristics, as these changes raise fees across affected fee schemes and will not decrease funding for any other groups of practitioners. We do not believe any uneven impacts will cause indirect discrimination.

²² The ratio is roughly 65%:35% males to females

