



Ministry of Justice

Litigators' Graduated Fees Scheme and Court Appointees Equality Statement

Policy Summary

1. This Equalities Statement has been written to be read alongside the consultation 'Litigators' Graduated Fees Scheme (LGFS) and Court Appointees' to which this statement is an Annex.
2. Whilst the substantive scheme is explained within the Consultation Document, the broad proposed changes are:
 - A longer term ambition to move away from Pages of Prosecution Evidence as a proxy for complexity;
 - A reduction in the current Pages of Prosecution Evidence (PPE) threshold to 6,000 pages; and
 - Paying for Court Appointees at legal aid rates.
3. We will update our equality considerations in light of the consultation responses.

Introduction

4. The Government is mindful of the importance of considering the impact of the legal aid proposals on different groups, with particular reference to users and providers of legally aided services.
5. In accordance with our duties under the Equality Act 2010 we have considered the impact of the proposals on individuals sharing protected characteristics in order to give due regard to the need to eliminate unlawful conduct,, advance equality of opportunity and foster good relations.
6. In this Annex we set out our initial analysis of the equalities impacts of the proposed change to the Litigators' Graduated Fees Scheme (LGFS) and the proposed alignment of the rates paid to court appointees with legal aid rates.

Legal duties

7. Under section 149 of the Equality Act 2010 ("the Act"), when exercising its functions the Ministry of Justice is under a legal duty to have 'due regard' to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Act;

- Advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and
 - Foster good relations between different groups.
8. The relevant protected characteristics for those purposes are: age, disability, gender reassignment, marriage and civil partnership (section 149(1)(a) only), pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
 9. Consistent with that duty, and with the statutory objectives of s.149 of the Act in mind, we have considered whether and how the policies in question are likely to impact on people sharing protected characteristics.
 10. The provisions of the Act currently in force contain, in Chapter 2, several forms of prohibited conduct, namely:
 - direct discrimination (s.13)
 - discrimination arising from disability (s.15)
 - pregnancy and maternity discrimination (s.17 and s.18)
 - indirect discrimination (s.19)
 - failure to comply with a duty to make reasonable adjustments (s.20 and s.21)
 - harassment (s.26)
 - victimisation (s.27)
 - breach of a non-discrimination clause (s.61)
 11. Those forms of prohibited conduct are considered, where relevant, in more detail in the analysis that follows.

Data Sources

12. We have identified the following data sources as providing the most relevant information on potential equality impacts:
 - Legal Aid Agency data on clients collected through provider billing information.
 - Legal Aid Agency data on providers with legal aid contracts (2015) (Annex A).
 - Published 2011 Census data, to enable comparisons with the general population to be made.
13. All of these data sources have some limitations. None of the data cover all of the protected characteristics. Our statistical analysis therefore only considers the available data on age, sex, race, disability, religion and sexual orientation. In addition:
 - LAA client data is recorded by providers, not legal aid clients themselves, and is therefore more open to inaccuracy compared to self defined data, particularly in respect of disability / illness and race.
 - As with many administrative datasets, the quality of the LAA client data is affected by the extent of missing data, particularly regarding illness / disability status and race.

- We have no data about court appointees, who need not hold a legal aid contract. However, we believe most appointees are likely to undertake legal aid work as criminal practitioners, so the legal aid data is a good proxy for the characteristic of court appointees.

Methodology

14. In line with 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'). Looking at the pool, we have then drawn comparisons between the potential impacts of each proposal on those who share particular protected characteristics, with those who do not share those characteristics. We have in addition compared the characteristics of individuals affected by the proposals with the characteristics of the general population (England and Wales) and the appropriate legal aid client or provider population where relevant. Where there are large differences we have considered the broad equality impacts of this.
15. We have used the available data and evidence sources we consider to be most relevant and reliable. In the absence of data on particular protected characteristics, we have assessed the impact on the basis of the impacts which may be reasonably anticipated.
16. In relation to the protected characteristics of gender reassignment, marriage and civil partnership, pregnancy and maternity no information is collected, for either clients or providers. It has not been possible, therefore, to assess the impacts of the proposals in respect of these protected characteristics using statistical analysis.
17. We considered whether or not we could collect more data on protected characteristics, but concluded such an exercise would be unlikely to produce any better data than those referred to above and neither proposal under consideration is likely to have a significant impact on protected groups that would make further data collection necessary or proportionate.

Objective

18. The primary objective of the package is to ensure that every aspect of legal aid expenditure is justified and that we are getting the best deal for the taxpayer. We want to more fairly pay for work actually and reasonably done and to reduce over-payment where the fee scheme produces fees that do not fully reflect the work done.

The Demographics of the Publicly Funded Criminal Legal Aid Market

The Providers

19. Legal aid services in England and Wales are delivered through various providers who are contracted by the LAA to do legal aid work and by barristers in independent practice. All criminal legal aid providers remunerated under the LGFS or act as court appointees may be affected by these proposals.

20. 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%, and this response rate should be borne in mind when interpreting all results. The limited response rate, and the fact the data spans the entire legal aid market, rather than just those who undertake work under the LGFS or as court appointees, significantly limits our ability to draw meaningful conclusions.
21. The survey asked 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.
22. The information gathered through this survey, set out in Annex A, indicated that in the positions of managerial control, there was an over representation of males (Figure 5), when compared to the general population, as well as an over representation within the age group 40-59 (Figure 8). However, the above considerations, and the fact there were a significant number of respondents for whom the information was not provided, make it difficult to draw significant conclusions. We consider that the nature of the reforms is such that they are unlikely to put people with these protected characteristics at a particular disadvantage, as explained below.
23. As of 2015, there were around 16,000 barristers practicing in England and Wales, an increase of 7% from 2010¹. The Bar Standards Board (BSB) estimates that around 5,000 specialise in criminal law². However, it is difficult to establish reliable figures on the number of barristers by area of practice as it is not compulsory for barristers to disclose their area(s) of practice.
24. Within the Ministry of Justice, statistics are not available on the make-up of the criminal litigation market as a whole. However, an indication of the types of 'protected characteristics' of individuals working within in the market can be drawn from the statistics below. It should be remembered that this consultation is seeking views from the profession, we are seeking relevant information to further inform our analysis and we will be updating this statement once we have considered all relevant responses and information.

Table 1: Legal profession demographics for whole legal profession^{3 4 5 6}

¹ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics>

² Jeffrey Review (2014): Independent criminal advocacy in England and Wales Analytical Narrative
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310717/jeffrey-review-criminal-advocacy-analytical-annex.pdf

³ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/queen%27s-counsel-statistics/>

⁴ Bar Standards Board statistics available at: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

⁵ Law Society "Annual Statistics Report 2015 available at: <http://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2015/>
The Solicitor statistics relate to solicitors on the roll, rather than solicitor advocates

	Gender		Ethnicity	
	Male	Female	White	BAME
Queen's Counsel* (2015)	87%	13%	93%	7%
Barristers* (2015)	64%	36%	87%	13%
Solicitors (2015)	51%	49%	85%	16%
Legal Executives (2015)	26%	74%	Unknown	Unknown

*Excluding barristers where gender or ethnicity unknown

**Figures may not sum to 100% due to rounding

The Clients

25. In recent years, eligibility for Legal Aid has been restricted for both civil and criminal matters. For criminal matters, whilst the eligibility criteria are far lower than other types of legally aided case, there is an interest of justice test when deciding whether an individual is eligible. However, when considering criminal legal aid clients at the Crown Court level, the interest of justice test is automatically passed.
26. From the table of diversity statistics below, we can see there is an over representation of males in the sample when compared to the general population (Figure 1). Further information on general population statistics are available in the Annex. Whilst the majority of clients for whom information on ethnicity is available are white, it is difficult to draw firm conclusions from the ethnicity data given the large proportion of clients whose ethnicity is unknown.
27. The percentage of those not considered disabled is significantly higher than those who either are considered disabled or where disability has not been established (Figure 2); however, again it is difficult to draw firm conclusions when compared to the general population data, given the large proportion of clients for whom disability status is unknown. This data will inform the equalities considerations and any possible mitigations where it is considered that clients from groups with protected characteristics are likely to be affected.

Table 3: Demographics of Criminal Legal Aid Clients in the Crown Court, 2014-15⁷

Gender			Ethnicity			Disabilities		
Male	Female	Unknown	BAME	White	Unknown	Not considered Disabled	Considered Disabled	Unknown
76%	9%	15%	14%	59%	26%	61%	20%	19%

exclusively, and includes registered European lawyers, registered foreign lawyers and exempt European lawyers.

⁶ Chartered Institute of Legal Executives (CILEx) ethnicity figures have not been provided because the ethnic group proportions published in the 'CILEx Membership Diversity Statistics' section of their website do not sum to 100%. Available at: http://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity/diversity-statistics/cilex-membership-diversity

⁷ Legal Aid Agency figures available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

*Note these proportions differ slightly from the charts in the annex, as this table uses published data which suppresses volumes under 5 for disclosure reasons.

28. We have included questions within the consultation to better understand the potential effect of these policies on individuals with protected characteristics. We will use the responses received from the consultation to identify further possible discrimination risks, particularly to clients, however we do not anticipate any change in service provision as a result of this reform and therefore do not anticipate any significant disadvantages to clients.

Equality Considerations - Impacts and Mitigations –LGFS

29. Whilst specific mitigations will be explained below where appropriate, we will continue to engage with the professional bodies throughout the consultation process. This will allow the professions to raise any further equality considerations to inform our assessment of the proposals.

Eliminating unlawful discrimination

Direct discrimination

30. Our initial assessment is that the proposals are not directly discriminatory within the meaning of the 2010 Act. The proposals will apply to the whole of the criminal legal aid market. As there are no proposals to make any provisions that specifically impact on a protected group, there is no direct discrimination within the meaning of the 2010 Act.

Indirect discrimination

31. The key principle underpinning the reforms is paying fairly for work reasonably and actually done.

32. Data on the protected characteristics of clients receiving criminal legal aid shows that men are over-represented compared with the general population⁸. As set out in the Impact Assessment, we do not consider that clients will see a substantive change in service provision as a result of the proposed reform. There may be changes which affect the user experience, for example if the identity of the provider of services changes or preferred representatives move firms or change their business structures, but we do not consider such an impact to amount to a disadvantage. Since contributions are payable (subject to means testing) as a proportion of the legal aid bill, it is possible clients may see a reduction in contributions if the overall bill for PPE reduces but we do not anticipate any increase in contributions.

33. Providers will be impacted by the proposals. However, since the reforms are targeted at businesses and it is not known precisely how those businesses will adapt in response to the reform, it is hard to draw meaningful conclusions about the likely impact on protected groups but we do not foresee any disproportionate impact on protected groups. In the event that protected groups may be over-represented among providers that are most impacted by the reform, we maintain that our proposals are a proportionate response to the legitimate aim of paying

⁹ Women in the labour market, ONS, <http://www.ons.gov.uk/ons/rel/lmac/women-in-the-labour-market/2013/rpt---women-in-the-labour-market.html>

fairly for work actually and reasonably done and achieving value for money for the taxpayer.

34. We will use the consultation process to learn more about those providers likely to be affected by the reforms and will keep the likely impact under review in light of those responses.

Mitigation

Discrimination arising from disability and duty to make reasonable adjustments

35. There is a lack of available data concerning disability amongst providers. We consider that the nature of the reforms is such that they are unlikely to put people with these protected characteristics at a particular disadvantage but we will consider any evidence of potential discriminatory impact in light of the responses to the consultation.

Advance Equality of Opportunity

36. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of providers who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic.

37. Although MoJ is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity generally, MoJ does not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve diversity within the professions or the judiciary. We do not consider that the proposals will make the attainment of these objectives more difficult, but if this transpired to be the case, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above.

Fostering good relations

38. Consideration has been given to how these proposals impact on the duty to foster good relations, and we do not consider that there is anything within these proposals that will have a negative impact regarding this objective.

Equality Considerations - Impacts and Mitigations – Court Appointees

39. Whilst specific mitigations will be explained below where appropriate, we will continue to engage with the professional bodies throughout the consultation process. This will allow the professions to raise any further equality considerations to inform our assessment of the proposals.

Eliminating unlawful discrimination

Direct discrimination

40. Our initial assessment is that the proposals are not directly discriminatory within the meaning of the 2010 Act. The proposals will apply to the whole of the potential court appointee market. As there are no proposals to make any provisions that specifically impact on a protected group, there is no direct discrimination within the meaning of the 2010 Act.

Indirect discrimination

41. The key principle underpinning the reforms is paying fairly for work reasonably and actually done. We do not believe that our scheme discriminates against individuals with protected characteristics but consider the potential for indirect discrimination under “Impact” below.

Mitigation

Discrimination arising from disability and duty to make reasonable adjustments

42. There is a lack of available data concerning disability amongst court appointees. We consider that the nature of the reforms is such that they are unlikely to put people with these protected characteristics at a particular disadvantage but we will consider any evidence of potential discriminatory impact in light of the responses to the consultation.

Advance Equality of Opportunity

43. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of providers who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic.

44. Although MoJ is mindful of the need to encourage those with a protected characteristic to participate in public life and the need to advance equality of opportunity generally, MoJ does not believe that remuneration for court appointees is the most appropriate policy instrument by which to achieve diversity within the professions or the judiciary. We do not consider that the proposals will make the attainment of these objectives more difficult, but if this transpired to be the case, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above.

Fostering good relations

45. Consideration has been given to how these proposals impact on the duty to foster good relations, and we do not consider that there is anything within these proposals that will have a negative impact regarding this objective.

Types of impact

Impact on providers

46. The individuals most likely to be impacted by these proposals are court appointees, who are likely, in large part, to be a sub-set of criminal legal aid providers.

47. Court appointees will be affected by receiving payment at legal aid rates rather than higher private rates.

48. We do not believe that our scheme discriminates against individuals with protected characteristics. The quality of the available data, and the fact that the proposal affects businesses rather than individuals directly, makes it difficult to draw meaningful conclusions about the impact on protected groups but no

disproportionate impact is foreseen. If persons with protected characteristics are over-represented in the affected group as compared to the general population, we consider that this effect would be justified by the legitimate aim of paying properly and fairly for work actually and reasonably done and securing value for money for the taxpayer.

49. However, if a group sharing a protected characteristic is over-represented amongst crime providers compared with the general population, then there is the possibility for the proposal to disproportionately impact that group. We consider any such impact to be justified as proportionate to the legitimate aims set out above.

Impact on clients

50. Data on the protected characteristics of clients receiving criminal legal aid shows that men are over-represented compared with the general population (Figure 1). However, we do not consider that our proposals are likely to disadvantage clients. Clients could be affected by either proposal if the changes have an impact on the sustainability of the legal aid market resulting in an adverse effect on service provision. However we do not anticipate such an impact, as set out in the accompanying Impact Assessment. Potential impacts on clients are likely to depend upon the provider response to the changes and we will continue to monitor the impact. There may be changes which affect the user experience, for example if the identity of the provider of services changes or preferred representatives move firms or change their business structures. But we do not consider that this would amount to a disadvantage

Conclusions

51. We consider that, particularly in the overall macroeconomic context and taking account of the need to make savings, these reforms are a proportionate and necessary means of achieving the legitimate aims set out in the consultation document.
52. These objectives are of critical importance, ensuring we can live within our means while maintaining a sustainable legal aid scheme. We consider them to be legitimate aims which we intend to pursue whilst having due regard to the statutory principles of equality and non-discrimination.
53. The reforms will apply to all people, irrespective of protected characteristics, and we do not therefore consider that they give rise to direct discrimination. We also do not consider that they are likely to give rise to a need for any particular 'reasonable adjustments'. Nor do we consider that these reforms will have any impact on instances of harassment or victimisation.
54. Proceeding on the basis that the proposals amount to provisions, criterion or practices, we have identified the likelihood for disproportionate impacts on some persons with protected characteristics. In these instances we have done the best we can to consider possible impacts. Although we accept that our proposals are likely to affect those with a particular protected characteristic, we do not consider that they necessarily amount to a particular or substantial disadvantage.
55. We consider that, both as a whole and individually, the proposals are a proportionate means of achieving a legitimate aim for the reasons set out in this statement.

Legal Aid Agency Client and provider characteristics

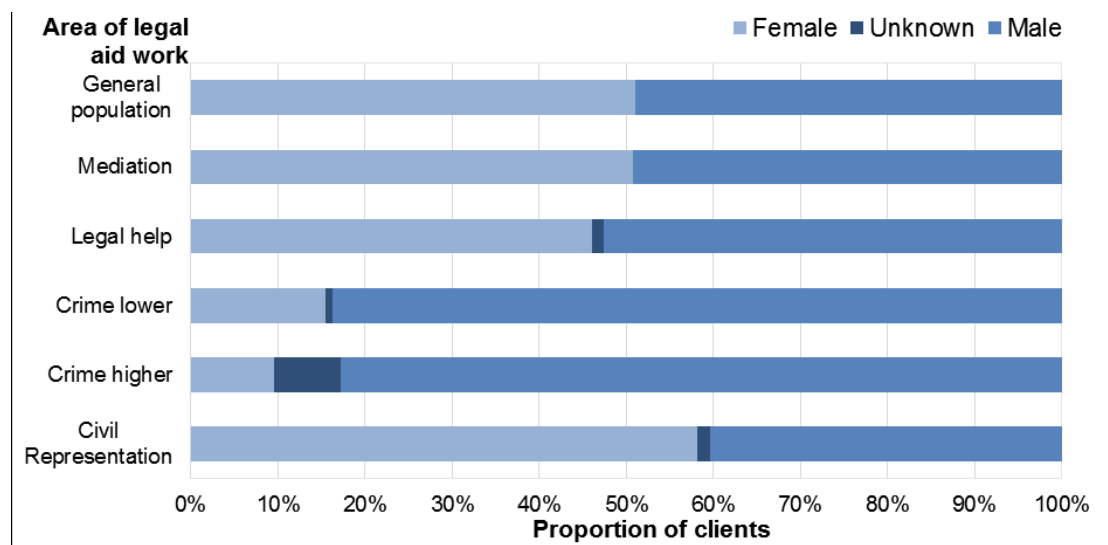
Client characteristics

The charts below show the breakdown of client protected characteristics for all areas of legal aid, compared with the national breakdown from the 2011 census data from the Office for National Statistics. This information is provided against the date the case was closed for all areas except for crime higher and magistrates' court age, which use the date the legal funding was granted.

Gender

The gender profile of criminal legal aid clients in 2015-16 differs from the national profile with a much greater proportion of male clients (Figure 1). This reflects the picture across the criminal justice system as a whole⁷ and has been consistent throughout the past 4 years for which data are published. The only change has been the proportion of unknowns in Crown Court data decreasing.

Figure 1: Proportion of legal aid clients in 2015-16 by gender

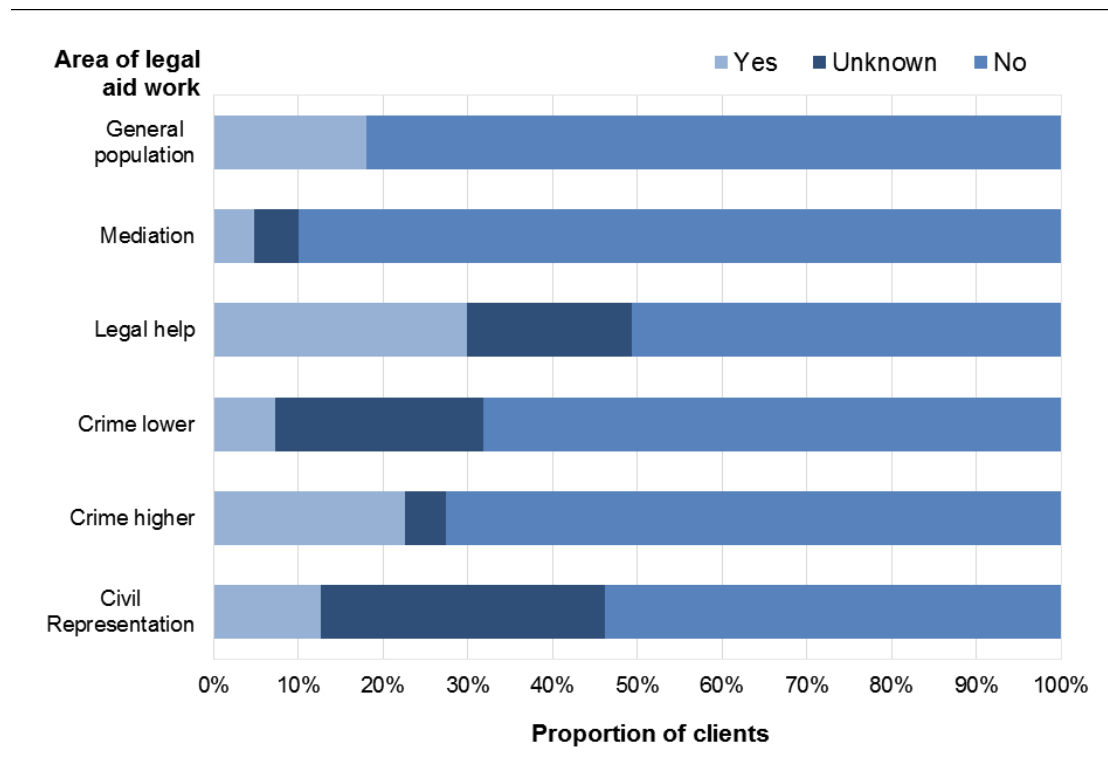


Disability

Figure 2 shows the proportion of legal aid clients who reported to have a disability. It is difficult to draw firm conclusions for most categories of legal aid on this characteristic because of the relatively high proportion of unknowns, especially for crime lower and civil representation.

The overall picture of client disability status changed little between 2014-15 and 2015-16, with the exception of crime higher where we are now seeing fewer unknowns in the data. This has allowed us for the first time to see that the proportion of legally aided clients with a disability in the Crown Court is higher than the general population average.

Figure 2: Proportion of legal aid clients in 2015-16 by disability status

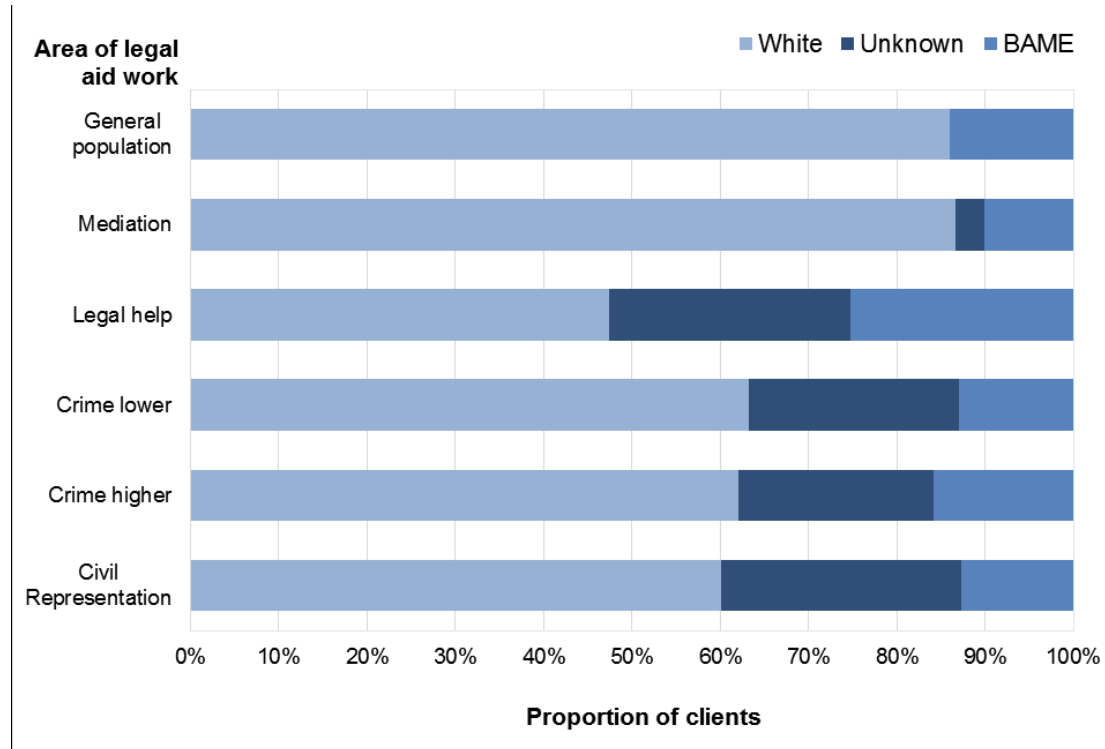


Ethnicity

Figure 3 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 in most areas.

Overall, the ethnicity profile of legal aid clients in 2015-16 is little changed compared with 2014-15.

Figure 3: Proportion of legal aid clients in 2015-16 by broad ethnic group 55

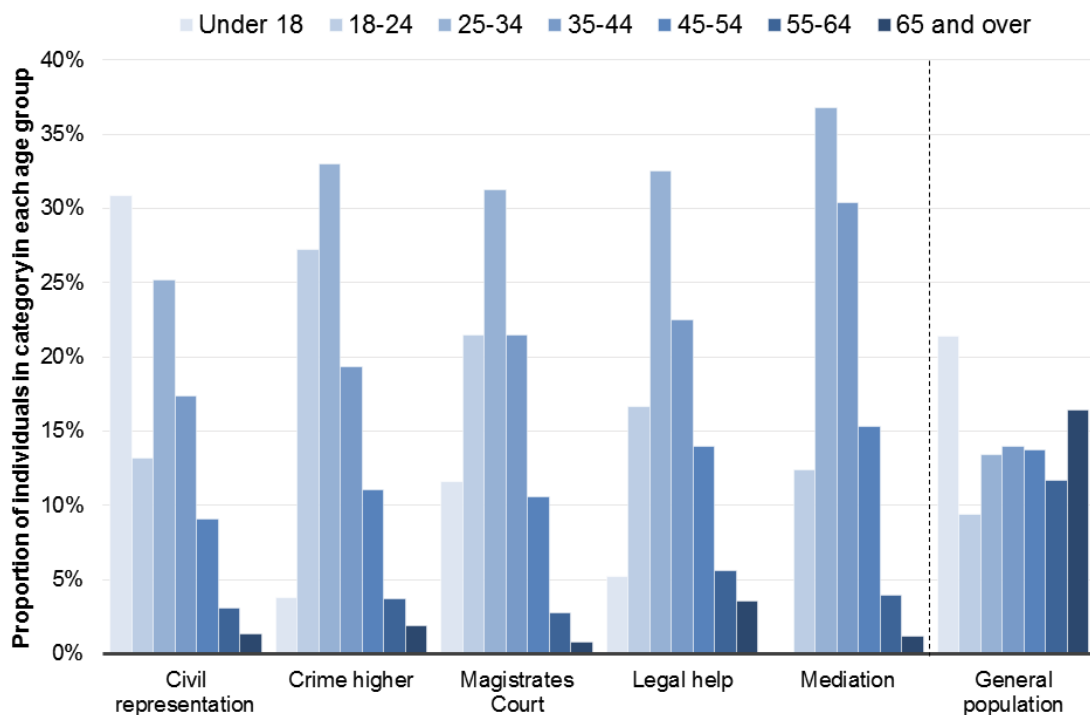


Age

Due to the relatively small proportion of unknowns for age, these have not been included for this graph (Figure 4), but are available in the underlying client diversity data file. Please see the user guide for more detail about unknowns and the age classifications.

A much greater proportion of clients of criminal legal aid are from young adult age groups (aged 18-24 and 25-34) than in the general population which reflects the pattern across the criminal justice system as a whole

Figure 4: Proportion of legal aid clients in 2015-16 by age band



Notes: Age data for crime lower is taken from a different computer system to the other characteristics and only includes magistrates' court work, not prison law or police station attendance work. In all areas except civil representation, the category "65 and over" represents ages 65-99, and those 100 or above have been put into unknown. Age profile information was not available for mediation prior to Jan-Mar 2015, when reporting moved onto a new system, so in the underlying data there are only five quarters worth of information as opposed to the full four years for other areas.

Provider characteristics

Legal aid services in England and Wales are delivered through various providers who are contracted by the LAA to do legal aid work. 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%, and this response rate should be borne in mind when interpreting all results.

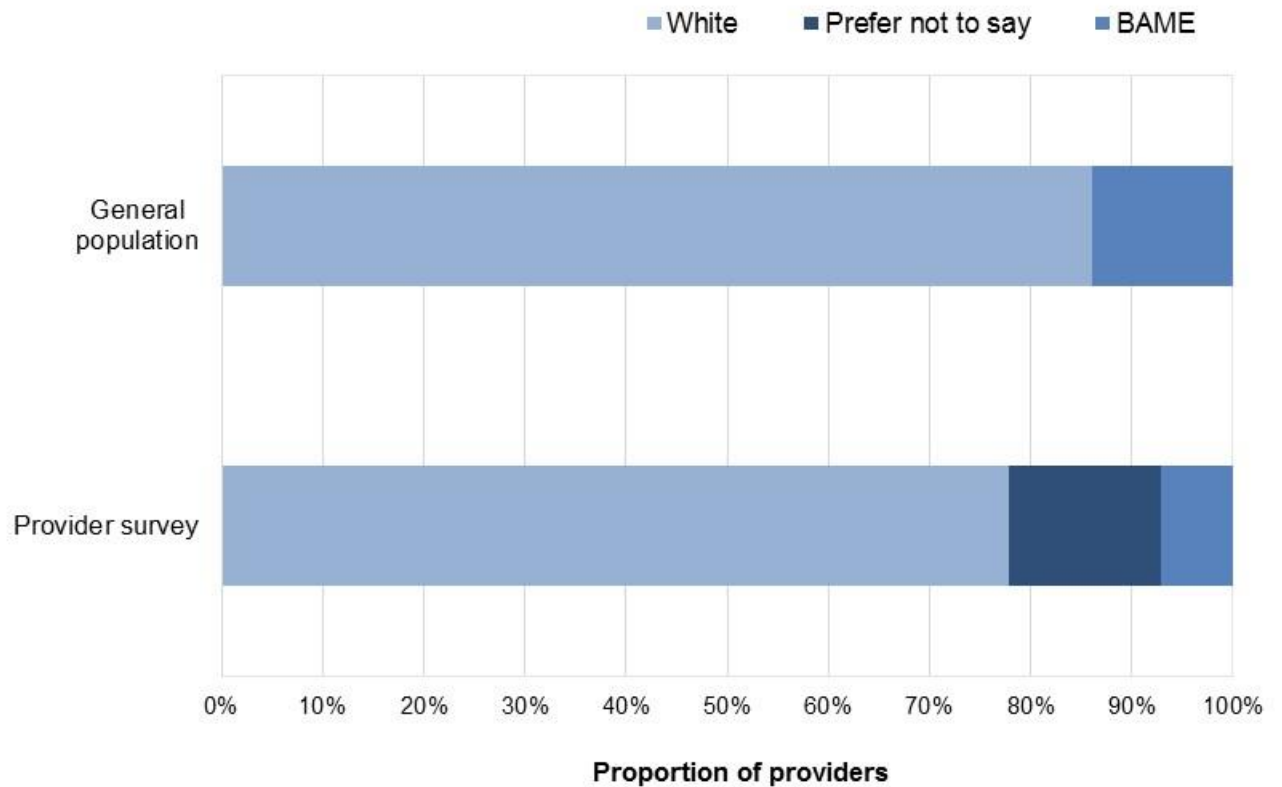
The survey asks about the protected characteristics of those who have ownership or managerial control of the firm (2,057 people), not the total headcount of the firms who

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.

Gender

60% of respondents were male, compared to 49% among the general population (Figure 5). This may partly reflect the fact that, employment rates are higher for men than women, especially over the age of 22⁹.

Figure 5: Proportion of responding providers by gender, 2015

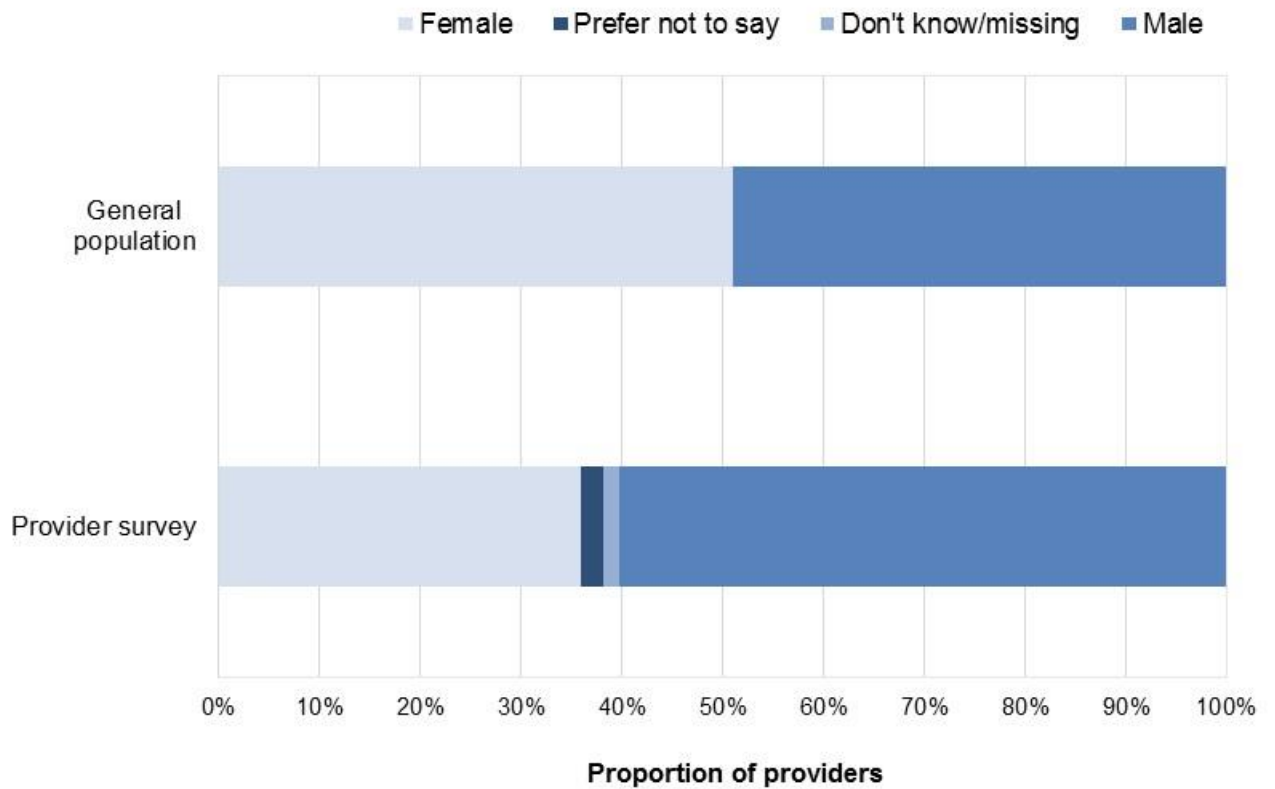


Ethnicity

The proportion of respondents who reported being of black, asian or minority ethnic (BAME) backgrounds is broadly similar to the general population, at 15%, but 7% of respondents preferred not to answer this question (figure 6).

⁹ Women in the labour market, ONS, <http://www.ons.gov.uk/ons/rel/lmac/women-in-the-labour-market/2013/rpt---women-in-the-labour-market.html>

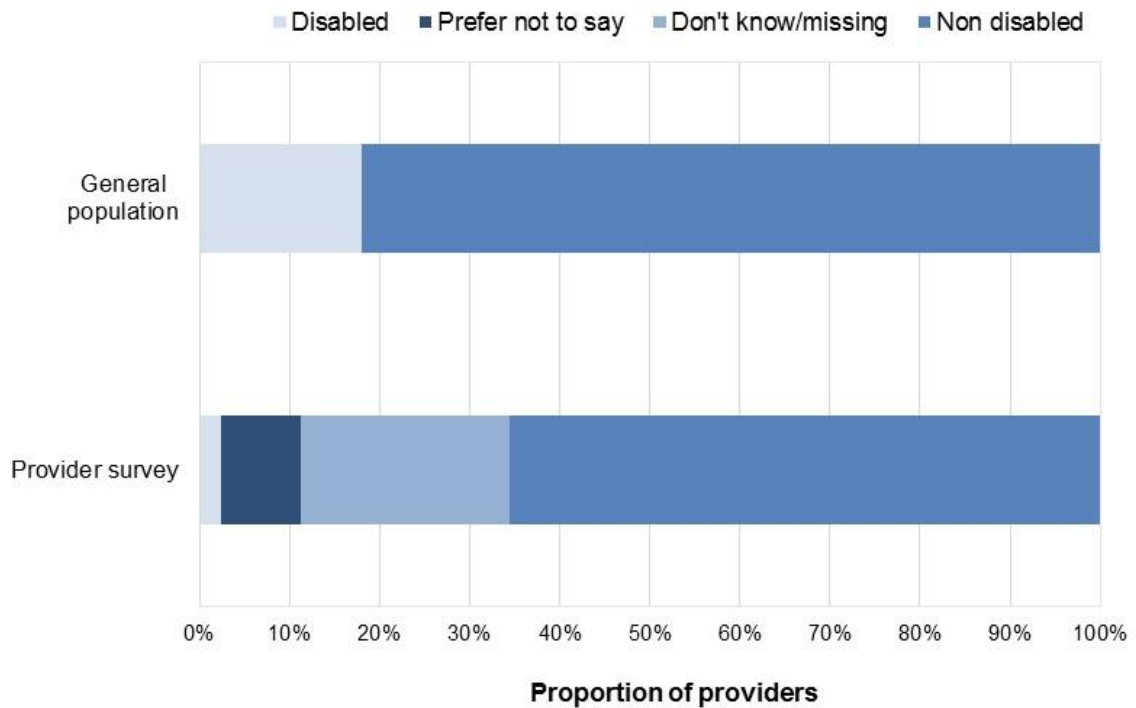
Figure 6: Proportion of responding providers by broad ethnic group, 2015



Disability

A large proportion (32%) of respondents did not declare their disability status (either prefer not to say or don't know/missing), so the results are difficult to interpret (Figure 7). 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.

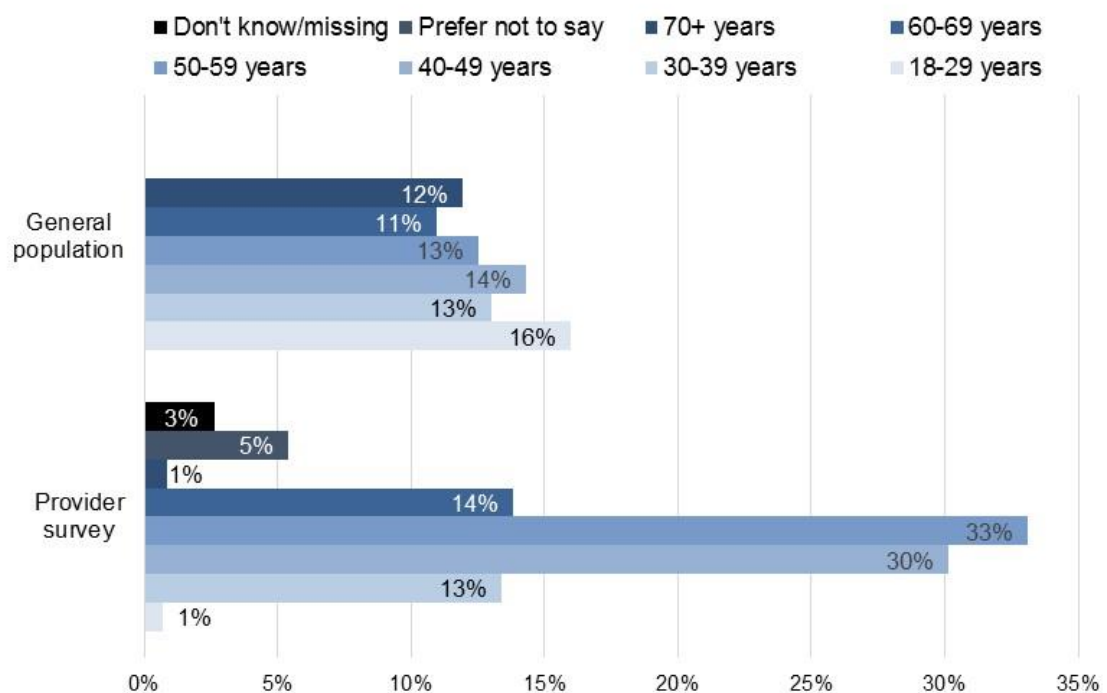
Figure 7: Proportion of responding providers by disability status, 2015



Age

Looking at those aged over 18, 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 over 18s are in this age group (Figure 8).

Figure 8: Proportion of responding providers by age group, 2015



Religion

As figure 9 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, Christian (30%) and not religious (18%) were the same as those for the general population.

Figure 9: Proportion of responding providers by religion

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 10 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 1.5% of the general population are gay, lesbian or bi-sexual¹⁰ this is similar to the result of the survey, where about 2% of respondents said they were gay, lesbian or bi-sexual.

Figure 10: Proportion of responding providers by sexual orientation

Sexual orientation	Provider survey
Hetrosexual/Straight	73%
Gay Man	1%
Gay Woman/Lesbian	<1%
Bisexual	<1%
Other	<1%
Prefer Not To Say	16%
Don't Know/Missing	8%

¹⁰ Figures are from the integrated household survey <http://www.ons.gov.uk/ons/rel/integrated-household-survey/integrated-household-survey/april-2011-to-march-2012/stb-integrated-household-survey-april-2011-to-march-2012.html>