

**EQUALITIES STATEMENT TO**  
**THE CIVIL LEGAL AID (HOUSING AND ASYLUM ACCOMMODATION) ORDER**  
**2023**

**2023 No. 147**

1. For the policy proposals contained within the above statutory instrument, we have, on the basis of the available evidence, considered the likely equalities impacts in this Equalities Statement.
2. This statutory instrument makes the following policy changes:
  - a. Expands the scope of legal aid to allow early advice before court for certain housing, debt and welfare benefits issues for those facing the loss of their home;
  - b. Introduces a new fee to remunerate providers for delivering this early advice;
  - c. Amends legal aid eligibility for failed asylum-seekers seeking accommodation support.

**Equality Duty**

3. Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act;
  - Advance equality of opportunity between 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).
4. Paying ‘due regard’ needs to be considered against the nine protected characteristics under the Equality Act. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
5. This is an ongoing duty, and as part of this obligation we will continue to monitor the impact of our proposals.

Methodology to determine potential discrimination

6. Adhering to guidance published by the Equality and Human Rights Commission, 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.

7. Guidance from the Equality and Human Rights Commission 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.

## **Analysis**

### The pool of affected individuals

8. Statistics about the pool of affected individuals of each policy change has been taken from Legal Aid Agency (LAA) datasets. The LAA collects data on ethnicity, gender, disability and age, and so this equalities statement is limited to an analysis of those four protected characteristics.
9. Statistics about the demographics of the general population have been sourced from the 2021 Census and refer to England and Wales for gender<sup>1</sup>, the 2020-21 Family Resources survey for disability,<sup>2</sup> and the 2011 Census for age<sup>3</sup> and ethnicity.<sup>4</sup> We follow the Government’s preferred style of writing about ethnicity, so the references to ethnic minorities refer to all ethnic groups except the white British group.<sup>5</sup>

### **Early legal advice before court for those facing the loss of their home**

#### Policy summary

10. Legal aid is currently available to individuals who are at risk of being homeless or who are facing possession or eviction proceedings. Legal aid reforms in 2013 through the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 generally removed early legal advice in housing cases unless there is a risk of homelessness, possession or eviction.
11. This means that in many instances, the first time someone with a housing legal problem comes into contact with a lawyer is on the day of their possession hearing. Advice is provided at court in possession hearings through the Housing Possession Court Duty Scheme (HPCDS), which provides ‘on the day’ emergency face-to-face advice and advocacy to anyone facing possession proceedings.
12. This proposal expands the scope of legal aid to allow early advice before court for certain housing, debt and welfare benefits issues for those facing the loss of their home. This in

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<sup>1</sup> [Population and household estimates, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk).

<sup>2</sup> [Family Resources Survey: financial year 2020 to 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

<sup>3</sup> [Age groups - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://ethnicity-facts-figures.service.gov.uk).

<sup>4</sup> [Population of England and Wales - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://ethnicity-facts-figures.service.gov.uk).

<sup>5</sup> [Writing about ethnicity - GOV.UK \(ethnicity-facts-figures.service.gov.uk\)](https://ethnicity-facts-figures.service.gov.uk).

turn will enable the remodelling of (HPCDS) into the Housing Loss Prevention Advice Service (HLPAS).

13. HLPAS will be a two-stage service. Firstly, the provision of early legal advice to support individuals to resolve the issue at the core of their legal problem at the earliest point. This could, in some cases, avoid the need for court proceedings altogether. Secondly, an ‘on the day’ in-court duty service for advice and representation at possession or eviction proceedings. This proposal will also introduce a fee to ensure that providers will be remunerated for delivering this early legal advice under the first stage of the new HLPAS.

### The pool of affected individuals

#### *Legal aid providers*

14. The primary pool of individuals affected by the proposals will be providers of the current HPCDS, including not-for-profit providers of the HPCDS. It may also affect potential entrants to the market who wish to deliver advice under the new HLPAS.
15. HPCDS services in England and Wales are delivered through various providers. We have limited information on these legal aid providers. 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. The survey was completed by 644 providers, a response rate of 28%. 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).
16. This limited response rate, the age of the data, and the fact that the data spans the entire legal aid market, rather than just those delivering the HPCDS, significantly limits our ability to draw meaningful conclusions. The information gathered through this survey indicated that in the positions of managerial control, there was an overrepresentation of males, when compared to the general population, as well as an overrepresentation within the age group 40-59.

#### *Individuals seeking housing legal advice*

17. The proposals will also affect individuals seeking advice and representation under the new HLPAS. We hold data on the clients of the HPCDS, and we are using 2019-20 volumes as opposed to more recent volumes in 2020-21 as volumes were significantly affected by the stay on possession proceedings during the Covid-19 pandemic. We have excluded cases where the information was recorded as “unknown”.
18. The available data indicates that 60% of the individuals were female, above the proportion in the general population (51%).

19. The data also shows that 27% of individuals were from an ethnic minority background, above the proportion in the general population (19.5%).
20. 30% of individuals using the HPCDS considered themselves to have a disability. This is above the proportion in the general population where 22% of people consider themselves to be disabled (22% in England, 28% of Wales).
21. The available data indicates that clients of HPCDS are most likely to be between 25-34 years old (24%), above the proportion of the general population (13.4%).

### Eliminating unlawful discrimination

#### *Direct discrimination*

22. Our assessment is that the proposals are not directly discriminatory within the meaning of the 2010 Act. The proposals will ensure that individuals facing housing possession proceedings will be able to access justice.

#### *Indirect discrimination*

23. Our initial assessment is that the proposals are not indirectly discriminatory within the meaning of the 2010 Act.
24. The available data indicates that females, individuals from an ethnic minority background and individuals with a disability are overrepresented among those who receive legal aid through the current HPCDS when compared to the general population. This means that the benefits which will arise for clients as a result of this proposal – for example receiving early advice on a wider range of issues to resolve their case without needing to go to court – may be disproportionately witnessed by individuals who fall into these groups.
25. The data outlined above also indicates that males may be overrepresented within legal aid providers in positions of managerial control, when compared to the general population, meaning that males may benefit more from any additional provider income as a result of this proposal than females.
26. Even though certain protected groups are overrepresented in the groups affected by the proposal and therefore the impacts of the policy may be uneven, our policy proposals would not be indirectly discriminatory because we do not consider that they put any group with a protected characteristic at a disadvantage. We think that if any particular disadvantage arose as a result of this proposal, it would be justified as a proportionate means of achieving the policy aim of making the service of providing advice and representation on housing possession more sustainable and more effective for clients. The proposal will allow additional legal advice to be provided to those facing the loss of their home and intends to divert cases away from court where possible.

#### *Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments*

27. We recognise that clients with disabilities are likely to seek legal advice on the issues being brought into scope. We will continue to ensure that reasonable adjustments are made by providers and the LAA in terms of the provision of information and services, whether provided online or on paper, are accessible, clear and simple to read. We will also continue to ensure that reasonable adjustments are made in the courts for individuals attending court for possession proceedings.

#### *Advancing equality of opportunity*

28. The proposals are aimed at improving the breadth of advice available to housing possession legal aid clients. It will also provide an additional stream of income for providers of the current HPCDS, by bringing advice before court into scope on a wider range of issues. It is therefore likely that providers and clients will benefit from the creation of the HLPAS and we hope that it will encourage more individuals, including those underrepresented in our datasets, to seek legal advice where they are facing a housing problem.

#### *Fostering good relations*

29. We have considered this objective and have concluded that it is unlikely to be of particular relevance to the policy proposals.

#### *Harassment and victimisation*

30. We do not consider there to be a risk of harassment or victimisation as a result of the policy proposals.

### **Legal aid eligibility for failed asylum-seekers obtaining accommodation support**

#### Policy summary

31. It is the Government's policy that asylum-seekers should have access to legal aid to assist with obtaining accommodation. This is in line with the wider policy that legal aid should be available where someone may be at risk of homelessness.

32. Legal aid for asylum accommodation is currently tied to sections 4 and 95 of the Immigration and Asylum Act 1999. When amendments to that Act are made which repeals section 4 and introduces a new section 95A, there would be a gap in legal aid eligibility where failed asylum-seekers would not be eligible for legal aid. This proposal rectifies that gap to ensure that the Government's policy that legal aid is available for asylum accommodation is retained for all asylum-seekers who risk becoming destitute without accommodation support.

#### The pool of affected individuals

##### *Legal aid providers*

33. The primary pool of individuals affected by the proposal will be clients who are eligible for legally-aided advice in relation to asylum support. However, the proposals will also affect legal aid providers who currently provide advice in relation to obtaining asylum accommodation, as well as potential entrants to the market who could deliver this advice in the future.
34. Legal aid advice in relation to obtaining asylum accommodation is delivered by legal aid providers who hold a civil legal aid contract in the Housing and Debt category. We have limited availability of information on these legal aid providers. 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. The survey was completed by 644 providers, a response rate of 28%. 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).
35. This limited response rate and the age of the data, and the fact that the data spans the entire legal aid market, significantly limits our ability to draw meaningful conclusions. The information gathered through this survey indicated that there is an overrepresentation of males among housing legal aid practitioners, when compared to the general population, and an overrepresentation within the age group 40-59.

#### *Individuals seeking accommodation support*

36. The datasets used in this section are individuals who receive legally-aided asylum support advice in 2020-21. We have excluded cases where the information was recorded as “unknown”.
37. The available data indicates that 49% of the individuals were female, slightly below the proportion in the general population (51%).
38. The data also shows that 100% of individuals were from an ethnic minority background. The proportion of the general population is 19.5%.
39. 57% of individuals considered themselves to have a disability. This is considerably above the proportion in the general population where 22% of people consider themselves to be disabled (22% in England, 28% of Wales).
40. The available data indicates that these individuals are most likely to be between 25-34 years old (36%), above the proportion of the general population (13.4%).

#### Eliminating unlawful discrimination

##### *Direct discrimination*

41. Our assessment is that this proposal is not directly discriminatory within the meaning of the 2010 Act. It is intended to ensure legal aid remains available in relation to obtaining accommodation support for asylum-seekers.

*Indirect discrimination*

42. Our assessment is that this proposal is not indirectly discriminatory within the meaning of the 2010 Act.

43. Although datasets are clear that certain protected groups are overrepresented in the groups affected by the proposal, and so it is likely that the impact of the proposal will be uneven, we do not consider any particular group will be put at a disadvantage. If any particular disadvantage arose as a result of this proposal, it would be justified as a proportionate means of achieving the policy aim of ensuring access to legal aid for those who may become destitute without support. This proposal supports the Government's wider policy objective of ensuring support for those at risk of homelessness.

*Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments*

44. The amendment extends to disabled individuals seeking access to legal aid. We therefore do not consider that individuals with disabilities will be put in a particular disadvantage from the proposals.

45. The LAA also has a reasonable adjustments policy in place where information and services, whether provided online or on paper, are accessible, clear and simple to read.

*Advancing equality of opportunity*

46. The proposal's intention is to ensure the continuation of legally-aided advice for asylum-seekers seeking accommodation support who, without it, may become homeless. As this proposal maintains the current position rather than changing it, we do not consider that it will negatively impact on this objective.

*Fostering good relations*

47. We have considered this objective and have concluded that it is unlikely to be of particular relevance to this policy change.

*Harassment and victimisation*

48. We do not consider there to be a risk of harassment or victimisation as a result of this policy change.