

Equality Impact Assessment Initial Screening - Relevance to Equality Duties

Before you complete an Equality Impact Assessment you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course.

The EIA should be used to identify likely impacts on:

- disability
- race
- sex
- gender reassignment
- age
- religion or belief
- sexual orientation
- pregnancy and maternity
- caring responsibilities (usually only for HR policies and change management processes such as back offices)

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

Defendants' costs orders from Central Funds: Royal Assent

The EIA has been updated to reflect the latest data on the characteristics of defendants.

2. Individual Officer(s) & unit responsible for completing the Equality Impact Assessment.

David Carter, Criminal Remuneration Branch

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
More effective use of public resources through the limiting of Central Funds payments to acquitted defendants in the magistrates' court and successful appellants in the Crown Court and Court of Appeal.	Successful outcomes will include a saving to Central Funds payments, which has no detrimental impact on court performance or the wider Criminal Justice System (CJS).

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings, submissions or business reports, comparative policies from external sources and other Government Departments).

Consultation documents and responses to consultation, data from court computer systems (which was also used to inform the Crown Court means testing interim impact assessment)

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.

Information is recorded on the court computer systems about the age, gender and ethnicity of defendants. While there has been an improvement in the recording of ethnicity, the data collected is not complete. In over nine per cent of sentences at the Crown Court in 2011, ethnicity is 'not stated'. In over 10 per cent of magistrates courts proceedings for indictable offences ethnicity was 'not known' in 2011. In just over 50% of magistrates courts proceedings for indictable offences ethnicity was 'not known' in 2008. No information is collected about disability, sexual orientation, gender reassignment, marital or civil partnership status, pregnancy or maternity, or religious belief. Separate data is held on payments from central funds, though this cannot be matched to the data on protected characteristics.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

No

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

No. The aims of this proposal are to reduce expenditure on legal expenses paid to acquitted defendants from central funds. Payments to all defendants, including those from protected groups will be restricted in the same way.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

No. Respondents to the 2008 consultation exercise did not identify any adverse equality impacts.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

By definition those affected have been arrested and prosecuted for a criminal offence, and evidence on people in the criminal justice system shows that BAME people and men are over-represented in these proceedings. Data on the Crown Court computer system (CREST) shows that there is a concentration of younger people in the Crown Court defendant population than in the population at large: nearly a quarter of all offenders who were sentenced at the Crown Court in 2011 were in the 20-24 age group. The same data also shows that the vast majority of offenders are men: 89 per cent of offenders sentenced at the Crown Court in 2011 were male. All BME groups have a higher representation in the criminal justice system than in the population as a whole.

Therefore the proposals under consideration here are likely to have a greater impact on BAME defendants as a group than on white defendants as a group. But this is not a function of the way these proposals are designed: the proposals have the same effect on acquitted defendants irrespective of their sex and ethnic group. It is simply that, because of the make up of the criminal defendant population, any proposals involving a reduction in the amounts paid to acquitted defendants are likely to affect BAME defendants as a group slightly more than white defendants as a group.

However, in the magistrates' court, BME defendants tend to be in lower income groups and therefore more likely to qualify for legal aid. In the Crown Court, where all defendants qualify for legal aid, BME defendants are likely to pay less by way of contributions, as their average income is lower. Given the gaps identified in the data on ethnicity, it is not possible to quantify these effects, but they are likely to offset any direct adverse impact on BAME defendants as a group..

Overall, and in summary, it is therefore considered that:

a. It is plain that the proposals involve no unlawful direct discrimination of any kind: they involve across-the-board restrictions on the legal costs payable from central funds applicable to every acquitted defendant who had funded their defence privately.

b. It is not accepted that measures to restrict payments from central funds payable to acquitted defendants:

i. constitute a "requirement or condition" for the purposes of the Race Relations Act 1976 or Sex Discrimination Act 1975; or

ii. are matters to which the wider definition of indirect discrimination ("provision, criterion or practice") contained in that legislation applies; or

iii. satisfy that wider definition.

c. If these measures do fall within either definition of indirect discrimination, it is considered that the discrimination is justified in that:

i. the proposals do not have a material discriminatory effect within the group to which they are directed;

ii. any adverse effect on BAME defendants (an effect which these proposals would have in common with any other proposals designed to reduce expenditure on legal costs from central funds) is amply justified by the policy objectives which the proposal serves, namely to achieve cost savings in expenditure and broadly to align defence legal fees paid from central funds with those paid from public funds through legal aid.

d. Careful consideration has also been given to the need to promote equality of opportunity between persons of different racial groups and the need to promote equality between men and women. Even if these proposals make the attainment of either objective marginally more difficult, it is considered that they are necessary to achieve the objectives set out above.

10. Is a full Equality Impact Assessment Required? Yes ☐ No ☒

If you answered 'No', please explain below why not?

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be downloaded from the Intranet at: <http://intranet.justice.gsi.gov.uk/justice/equdiv/equal-impact.htm>, and should be referenced here.

A full EIA is not required because the proposals affect all defendants equally.

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

We will use data from Court computer systems to monitor and review the proposed changes after implementation.

12. Name of Senior Manager and date approved

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA.** The summary will be published on the external MoJ website.

The EIA relates to the award of costs from central funds to acquitted defendants. It follows a consultation undertaken in 2008, in which it was decided to limit the availability of defendants' costs orders. The current policy broadly follows the original proposals, and takes into account responses to the consultation, as well as the judgment of the Administrative Court in June 2010 following the legal challenge brought by the Law Society.

Name (must be grade 5 or above): Mark Taylor

Department: Ministry of Justice

Date: 13 May 2011

Full Equality Impact Assessment

13. Which group(s) of people have been identified as being disadvantaged by your proposals. What are the equality impacts?

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14. What changes are you planning to make to your original proposals to minimise or eliminate the adverse equality impacts? Please provide details of the proposed actions, timetable for making the changes and the person(s) responsible for making the changes.

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15. Please provide details of whether or not you will consult on the proposed changes, particularly with disabled people and if you do not plan to consult, please provide the rationale behind that decision.

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16. Can the adverse impacts you identified during the initial screening be justified and the original proposals implemented without making any adjustments to them? Please set out the basis on which you justify implementing the proposals without adjustments.

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17. Do your proposals miss an opportunity to promote equality of opportunity? If so, do you plan to take action to remedy this and if so, when? Please provide details.

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18. You are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts.

Please provide details of how you will monitor/evaluate or review your proposals and when the review will take place.

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19. Summary details, sign off by Senior Manager and date approved.

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA.** The summary will be published on the external MoJ website.

Name (must be grade 5 or above):

Department:

Date:

Note: The EIA should be sent **by email to anthony.shepherd@justice.gsi.gov.uk of the Corporate Equality Division (CED), for publication.**