



Legal Aid Reform: Scope Changes

Equalities Impact Assessment (EIA)

Scope of this EIA

1. This EIA accompanies the consultation paper *Proposals for the Reform of Legal Aid in England and Wales* that was published by the Ministry of Justice (MoJ) on the 15 November 2010. It is concerned with the proposed changes in relation to the scope of civil legal aid.
2. The EIA analyses the likely impact of the proposed reforms on the promotion of equality of opportunity and the elimination of unlawful discrimination on the grounds of disability, sex or race. It is designed to ensure that the Government has proper regard to these aims, in accordance with its statutory equality duties under:
 - section 49A of the Disability Discrimination Act 1995;
 - section 71 of the Race Relations Act 1976; and
 - section 76A of the Sex Discrimination Act 1975.
3. The Government has taken into account the relevant statutory Codes of Practice in these areas.
4. This EIA is an initial attempt to identify those areas in which there is a risk that the proposed changes will have an adverse impact upon particular groups protected under equality legislation. We welcome feedback on all of the issues raised in this document. Any representations received in response to this initial EIA will be used to inform the full EIA that will accompany the Government's eventual response to the consultation. Comments received via the consultation will also be used to develop the Government's approach to the questions raised in this document.
5. The proposed reforms to legal aid cover a wide range of policy changes which are considered in individual Impact Assessments (IAs), with accompanying EIAs. This EIA should be read alongside the IA relating to the proposed changes to the scope of Legal Aid.

Legal aid reform: policy objectives

6. The modern legal aid scheme was established in 1949 with a laudable aim: to provide equality of access, and the right to representation before the law. However, the scope of legal matters covered was very tightly drawn. Since then the scope of legal aid has expanded beyond its original intentions, and is now available for a very wide range of issues, including some which should not require any legal expertise to resolve. There is a compelling case for going back to first principles in reforming legal aid, to ensure access to public funding in those cases that really require it, the protection of the most vulnerable in our society and the efficient performance of our justice system. Taxpayer funding of legal advice and representation will be reserved for serious issues which have sufficient priority to justify the use of public funds subject to people's means and the merits of the case.
7. Alongside this, the Government has made clear that its first priority is to reduce the burden of debt by reducing public spending. The Government's spending plans, set out in the 2010 spending review, included a real reduction in income of 23% in the

budget of the MoJ over the four years to 2014-15. Legal aid must therefore make a substantial contribution to the required savings.

8. The proposals in this consultation seek to deliver substantial savings in a fair, balanced and sustainable way. They will encourage people to resolve their problems themselves and to use alternatives to the courts where they are effective. They will help reserve the courts for serious legal issues where there is a public interest in assuring access, and then only as a last resort. They also seek to ensure that scarce resources are targeted efficiently and effectively, delivering overall value for money.
9. The proposals for reform therefore cover all aspects of the legal aid scheme: its scope; those eligible for assistance; and the fees paid to those who provide legally aided services.

Specific proposals: policy objectives

10. The proposals in this EIA are based on careful consideration of what types of case and proceeding should continue to merit public funding, in the light of the pressing need to reduce public spending on legal aid. We have taken into account the Government's domestic, international and European obligations (including the European Convention on Human Rights) and the following four factors:
 - **The importance of the issue:** In assessing which matters should remain in scope we have tried to consider whether the consequences of the case at hand are objectively so serious as to add weight to the case for the provision of public funds. This may be because of the potential seriousness of the direct consequences, such as the loss of life, liberty or home or because the cases are the means by which an individual can hold the state to account by judicial review.
 - **The litigant's ability to present his / her own case:** Considerations have included whether, in each type of case, the people bringing proceedings are likely to be predominantly from a particular physically or emotionally vulnerable group, who would find it difficult to represent themselves in proceedings. In determining whether a litigant would be able to represent themselves, we have also taken into account whether the nature of the case is such that the level of legal complexity is likely to be particularly high.
 - **The availability of alternative sources of funding:** The proposals take into account whether litigants are able to fund their case in other ways. Where the majority of cases could be brought using an alternative source of funding (such as the use of Conditional Fee Agreements (CFAs) to seek damages, litigants might use these other sources of funding to bring or defend proceedings. The existing merits criteria in the civil legal aid scheme already reflect this principle to an extent, and the proposals in this EIA build upon them.
 - **The availability of alternative routes to resolution:** Considerations have included whether there are other forms of advice or assistance available to help individuals resolve their issues, without seeking legal advice. The proposals also take into account whether there might be other ways of resolving the issue so that it might not ordinarily be necessary to seek redress through the courts, such as the existence of an ombudsman or complaints procedure.

11. In weighing up the criteria, no one single factor has been determinative; the proposals have sought to balance these considerations in determining our proposals for future scope.
12. The policy objective of the scope reforms is to ensure that the limited resources available for legal aid are targeted at types of case and proceedings where the Government judges that publicly funded legal advice is justified, and in relation to which, without legal aid, the individual could be denied access to justice.

Aims / outcomes

13. This EIA is in draft form and the purpose of the draft EIA is to provide the data and analysis used to flag likely equalities impacts. We welcome feedback on the impacts identified, and any responses received via the Government's consultation *Proposals for the Reform of Legal Aid in England and Wales* will be taken into account in making decisions on any options for implementation and to help identify any steps that can be taken to mitigate any potential impacts. This document is draft initial screening only and feedback will be used to inform the full EIA that will accompany any consultation response.
14. We are mindful of the importance of considering the impact of reductions in public expenditure on different groups, with particular reference to users and providers of legally aided services. We have considered the impact on client groups and on providers in both the private and Not for Profit (NfP) sectors of all the measures in the package in line with legal requirements under the existing race, sex and disability duties.
15. The proposals represent choices about which the Government will make decisions having taken into account the responses to the consultation *Proposals for the Reform of Legal Aid in England and Wales*, and therefore the impacts described in EIAs (and the accompanying IAs) should be seen as provisional only. The Government intends to use the consultation period to gather further information on the likely impacts of the package of proposals to fill any gaps in our existing evidence base.
16. Final EIAs (and IAs), which will reflect the package of measures Government wishes to pursue following consultation, will be produced alongside the response to this consultation which is currently planned for publication in Spring 2011.

Information sources and evidence

17. The analysis in this EIA draws on a range of data sources.

Client impacts:

18. Legal Services Commission (LSC) client data are collected systematically through provider billing in the civil categories of law, and include records of the clients' ethnicity, gender and long-term illness or disability status. Although this source is the most robust record of client characteristics available, it is subject to a number of limitations. In many categories there are a significant proportion of client records for which some of the information is unknown or unrecorded. Where this is the case, the results are presented inclusive of these records and conclusions presented with caveats where appropriate. In spite of these limitations, client data reported through provider billing remains the most reliable data source for clients.

19. It should be noted that all categories feature significant non-response rates for race and disability client characteristics, and as such findings should be treated with caution.

Provider impacts:

20. The primary source used for this analysis is the Legal Services Research Centre (LSRC) equalities data, collected to support their *Routine Diversity Monitoring of the Supplier Base* report,¹ published annually. This provides the basis for analysis of solicitor provider impacts against race, sex and disability requirements. These data represent the main data source available for analysis of equalities impacts against the legal aid provider base. With an average response rate of 40% the survey is used to provide baseline evidence for legal aid providers. Results and conclusions drawn from small sample sizes are qualified where appropriate with caveats.
21. Information on sample sizes and proportions at the aggregate level for providers affected under these proposals is shown in table 29 at Annex 1.
22. For impacts on the Bar, the primary data source is the joint LSC / Bar Council 2007-08 survey data, the *Barrister Workforce Profile*², which featured a 34.7% response rate. In addition, in considering impacts on the Family Bar, we have drawn on the *Week-At-A-Glance Survey*.³ These surveys are used to provide the baseline characteristics of the barrister workforce across different categories of law.
- 23. As with the other data sources included in this EIA, results drawn from small samples are presented with the appropriate caveats. Where sample size is so small as to prevent meaningful comparison, or where identification of individual providers might be possible as a result of sample size, no analysis is shown and an explanatory note features.**
24. All information used in the analyses, for both providers and clients, is based on 2008-09 claims.
- 25. It should be noted that we do not hold information as to non-legal aid income for providers. Therefore reductions in income stated throughout this document refer to legal aid income only.**

Impact analysis

26. In our consideration of the potential for unlawful discrimination, we have considered the impact of the proposed changes on people having a relevant protected characteristic. In the context of this EIA, 'relevant protected characteristic' is meant to refer to an individual's disability, race, sex, gender reassignment or marriage and civil partnership.
27. The following sections consider the relevant equalities impacts of each proposal. We set out separately our current understanding of the impacts on clients, solicitors, the Bar and not for profit providers based on available evidence.

¹ <http://www.lsrc.org.uk/diversity.html>

² LSRC, February 2008 (unpublished)

³ Debora Price, D. & Laybourne, A. (2009) *The Work of the Family Bar: Report of the Week-At-A-Glance Survey 2008*. Family Law Bar Association

28. In addition we identify any gaps in our evidence base in relation to the equality impacts of the proposals and set out how we intend to gather further data during the consultation period in order to inform decisions on the final package of measures the Government wishes to implement.
29. Percentages in this document are rounded, so totals will vary between 99% - 101%.

Methodology - providers

30. Provider analysis is conducted at a national level and on a London against non-London basis. In addition, comparative impacts on the not for profit (NfP)⁴ and solicitor sectors are shown, with separate analysis for the Bar.
31. The potential financial impacts of the proposals for individual solicitor and NfP providers have been modelled using LSC claim data, and this information compared with equalities information for those providers held by the LSRC⁵ in order to assess any potential disproportionate impact.
32. The potential financial impacts of the proposals on the Bar have been modelled using LSC data, and these impacts then compared with aggregated equalities data from the joint LSC / Bar Council barrister workforce survey. Therefore the Bar analysis does not allow us to match individual barristers to equalities data. However, this is the most robust approach given the available data.
33. For each option impacts on providers are considered at a national level, with no distinction made between solicitor and NfP organisations. This analysis is then broken down between solicitor and NfP providers. Where possible, any disparate impacts are explored and further analysed. Impacts are also then considered on a London against non-London basis.
34. Bar impacts are considered solely at the national level due to the available data and are not included in the option by option analysis, but are assessed under option 14. All data tables referenced are contained within the data section at the end of this EIA.
35. **It should be noted that we do not hold information as to non-legal aid income for providers. Therefore reductions in income stated throughout this document refer to legal aid income only.**

Methodology – clients

36. We have used LSC claim data on current service users to identify those who would be affected. Data are collected on clients' race, sex and illness or disability status, allowing us to describe the personal characteristics of the affected client group.
37. This group is then compared to the population as a whole⁶ using data from the census. Differences between affected clients and the general population reflect

⁵ As a result of confidentiality restrictions, LSRC are on the only body with permission to access and use the survey data.

⁶ Race and sex comparisons are made to the UK population as a whole, whereas illness or disability status is compared to the population of England and Wales.

how likely people are to use the relevant service. This analysis shows that, overall, women and black, Asian and minority ethnic (BAME) clients are more likely to receive legal aid and therefore many of the proposals are seen to affect these groups more.

38. The characteristics of clients affected by the proposal are then compared to those of all civil legal aid clients, as well as the population as a whole. This shows how people who use the affected service differ from those who might use other services, and takes into account the fact that some groups are more likely to use civil legal aid services than others.
39. The affected client group is then compared to other service users within the same category of law who would not be affected by the proposals. This allows as much as possible for a direct comparison between people who are affected and those who are not, based on the equalities strands, taking account of the personal characteristics of those who use the service.
40. This approach of comparing affected clients against three different unaffected groups supports a fuller understanding of how the potential impacts of the proposals might vary based on individuals' race, sex, and whether they are disabled.
41. At the population level, it shows how any changes to civil legal aid would spread across different groups, and this is particularly relevant where it is proposed that services be withdrawn. As the analysis focuses on legal aid clients with particular legal problems it shows how the particular policy proposal interacts with the client group for the service in question, supporting an understanding of how changes to the rules governing legal aid might affect different clients in different ways.
42. Figures are presented at an aggregated level for white and BAME people. People with a recorded race of 'other' have been included in the figures for BAME people in both legal aid client data and census data for the population.

Option 1 – Remove clinical negligence from scope

Description

- 1.1. Under this option, all clinical negligence matters would no longer be retained in scope. Legal aid currently funds Legal Help and Representation for litigants who have suffered negligent medical or dental treatment to seek damages against any type of public or private medical practitioners, including doctors, nurses and dentists.

Legal duties

- 1.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 1.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 1.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 1.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 1.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

Elimination of unlawful discrimination, harassment and victimisation

A. Direct discrimination, harassment and victimisation

- 1.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 1.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 1.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 1.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 1.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and have concluded that they do not.

B. Indirect discrimination

- 1.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

 - (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
 - (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
 - (c) it puts, or would put, B at that disadvantage, and*
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*
- 1.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 1.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.

1.15. In summary, our initial analysis of impacts on clients under this option is as follows:

- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
- That having been said, it is estimated that disabled people comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
- The proportion of clients affected by the proposed changes that fall within this group is therefore likely to be high relative to their proportions in the population.

1.16. In summary, our initial analysis of impacts on providers under this option is as follows:

- Comparative race analysis cannot be provided due to sample size.
- Female owned and controlled providers see a marginally greater impact under this proposal than their male counterparts.

1.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

1.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:

- the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism which should ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
 - Moreover, insofar as the proposed changes may have a greater effect on disabled people relative to the total population of England and Wales, this is at least in part an inevitable effect of the composition of the client base for civil legal aid in this category.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 1.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 1.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 1.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 1.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 1.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above.

Initial analysis of impacts

A. Clients

- 1.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 1.25. Table 1 in Annex 1 shows the impact of removing clinical negligence from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 1.26. Within the dataset there are a total of 6381 claims in the clinical negligence category, comprised of both Legal Help and Representation matters. Female clients accounted for 52% of claims, whilst male clients accounted for 47% of claims.
- 1.27. The population is 51% female and 49% male. Women are therefore slightly more likely to have a clinical negligence case funded through legal aid than men compared with the population as a whole, although the size of the difference (1 percentage point) is small.
- 1.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not recorded). Women therefore make up a lower proportion of clinical negligence clients when compared to all civil legal aid clients.

Race

- 1.29. Of the 6,381 claims in the dataset, 67% were by white clients, 7% for BAME clients, 4% were categorised as 'other', with 23% relating to cases where race was either unknown or not recorded.
- 1.30. The population is 92% white and 8% BAME. However, the relatively large proportion of claims with no race recorded means that robust conclusions cannot be drawn from this data.
- 1.31. Of all civil legal aid clients, 64% are white, 26% are BAME and the race of the remaining 11% is not known. Again, the relatively large proportion of claims with no race recorded means that robust conclusions cannot be drawn from this data.

Disability

- 1.32. Of the 6381 claims in the dataset, 30% were for people with an illness or disability, 29% for people without any such illness or disability, whilst the Disability status of the remaining 41% of clients was either unknown or unrecorded.
- 1.33. Of the total population of the England and Wales 18% are disabled and 82% are not. Therefore, disabled people are more likely to have a clinical negligence case funded through legal aid than people who are not disabled, when compared to the population as a whole. This is likely to be because the category relates explicitly to harm in a medical and therefore health context.

- 1.34. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not recorded whether they are ill or disabled. Therefore, compared with all civil legal aid clients, those receiving clinical negligence advice and representation may be significantly more likely to be disabled than in other categories of law, but the converse may also be true. However given the significant non-response rate it is not possible to be certain of any degree of overrepresentation.

Conclusions on client impacts

- 1.35. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on ill or disabled people, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population. As such, any reduction in the scope of legal aid within this category has the potential to have a disproportionate impact. This may also be the case in relation to the civil legal aid client base as a whole, however, the significant number of non-response rates in relation to disability status (41%) means this finding must be treated with caution.
- 1.36. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 1.18.

B: Providers

National impacts

- 1.37. Table 3 in Annex 1 shows the impact of removing clinical negligence from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities impacts were these proposals to be implemented:

Sex

- 1.38. Of the providers delivering clinical negligence services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (73% of providers) see an average reduction in income of 30%;
 - female owned and controlled providers (15%) see an average reduction in income of 33%; and
 - providers with split ownership and control (12%) see an average reduction in income of 30%.
- 1.39. The analysis shows that the impact on both male and female providers is broadly similar, with no statistically significant difference.

Race

- 1.40. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of BAME owned and controlled providers within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Disability

- 1.41. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers employing an ill or disabled manager (5% of providers) see an average reduction in income of 24%; and
 - providers that do not employ an ill or disabled manager (95%) see an average reduction in income of 30%.
- 1.42. The impact on both provider types is broadly similar, with no statistically significant difference.

National impacts, solicitor / NfP

- 1.43. There were no NfP organisations in the matched dataset delivering clinical negligence services, so the impacts for these organisations are therefore not presented for this option. The impact for solicitors' firms is therefore identical to the national combined statistics presented above.

London / non-London Impacts

- 1.44. Table 4 in Annex 1 shows the impact of removing clinical negligence from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 1.45. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 3% in London (43% of providers) and 33% outside of London (78%);
 - female owned and controlled providers see an average reduction in income of 19% in London (43%) and 37% outside of London (11%); and
 - providers with split ownership and control see an average reduction in income of 2% in London (14%) and 35% outside of London (12%).
- 1.46. The analysis shows that impacts are not statistically significant between London providers, and nor are they statistically significant between non-London providers.
- 1.47. Providers with majority female ownership and control were more likely to be based in London than those with majority male ownership and control.

Race

- 1.48. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of BAME owned and controlled providers within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Disability

- 1.49. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers featuring an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Conclusions on provider impacts

- 1.50. The main differential, namely that between female and male owned and controlled providers, is discussed above. This is not considered to be statistically significant.
- 1.51. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 1.18.

Option 2 – Remove consumer from scope

Description

- 2.1. Under this option, all consumer and general contract matters would no longer be retained in scope. Legal aid is currently available for Legal Help and Representation for litigants to bring civil law actions regarding contracts and their enforcement, where, for example, there has been a breach of contract, a dispute over possession, or consumer credit issues. This area of law also covers Legal Help and Representation in professional negligence proceedings, except where the alleged negligence relates to services provided in relation to the client's business.

Legal duties

- 2.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 2.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 2.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 2.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 2.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 2.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:
'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 2.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 2.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 2.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 2.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and have concluded that they do not.

B. Indirect discrimination

- 2.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 2.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 2.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 2.15. In summary, our initial analysis of impacts on clients is as follows:

- There are clients for whom our dataset does not have information about gender, race and / or disability, so there are limits to how robust our conclusions from the data can be.
- That having been said, it is estimated that BAME individuals comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
- The proportion of clients affected by the proposed changes that fall within this group is therefore likely to be high relative to their proportions in the population.
- Analysis also suggests that male clients would see a greater impact when compared to the civil legal aid client base as a whole.

2.16. In summary, our initial analysis of impacts on providers is as follows:

- In terms of sex, no distinct impact is seen for one group over another.
- In terms of race, BAME providers see a slightly higher impact than their white British counterparts.

2.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

2.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:

- the importance of the issues at stake;
- the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
- the availability of alternative sources of funding e.g. CFAs; and
- the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism which should ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on male clients relative to the civil legal aid client base as a whole, this is an inevitable effect of the composition of the client base for civil legal aid in this category.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 2.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 2.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 2.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 2.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 2.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 2.24. **It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**

- 2.25. Table 1 in Annex 1 shows the impact of removing consumer from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 2.26. Within the dataset there are a total of 3739 claims in the consumer category, comprised of both Legal Help and Representation matters. Of these, 49% were for female clients and 50% for male clients, with the remainder of clients of unrecorded sex.

The population is 51% female and 49% male. Therefore, there would not appear to be any disproportionate impact when compared to the population as a whole.

- 2.27. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Male clients are therefore overrepresented when compared to all civil legal aid clients.

Race

- 2.28. Of the 3739 claims in the dataset, 67% were for white clients, 14% for BAME clients, and 19% for clients whose race was either unknown or not recorded.

- 2.29. The population is 92% white, and 8% BAME. BAME clients are therefore more likely to have a consumer case funded through legal aid when compared with the population as a whole.

- 2.30. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not recorded.

Disability

- 2.31. Of the 3739 claims in the dataset, 17% related to those with either an illness or disability, with 53% relating to those without any such illness or disability, whilst the disability status of the remaining 30% was unknown.

- 2.32. Of the total population of England and Wales 18% are disabled and 82% are not

- 2.33. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not recorded whether they are ill or disabled.

Conclusions on Client Impacts

- 2.34. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on male clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to all civil legal aid clients. Analysis also suggests that BAME individuals would see a disproportionate impact under these proposals.

- 2.35. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 2.18.

B. Providers

National Impacts

2.36. Table 5 in Annex 1 shows the impact of removing consumer from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 2.37. Of the providers delivering consumer services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (71%) see an average reduction in income of 4%;
 - female owned and controlled providers (12%) see an average reduction in income of 4%; and
 - providers with split ownership and control (17%) see an average reduction in income of 3%.
- 2.38. The analysis shows the impacts for all groups are within a range of 2 percentage points and as such the proposal does not impact disproportionately in a statistically significant way.

Race

- 2.39. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers (89%) see an average reduction in income of 3%;
 - BAME owned and controlled providers (8%) see an average reduction in income of 6%; and
 - split owned and controlled providers see an average reduction in income of 5%.
- 2.40. The analysis shows that, on the national level, providers with majority BAME ownership and control and those with split ownership and control experience very similar impacts, with no variation being statistically significant.

Disability

- 2.41. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers featuring either an ill or disabled manager (7%) see an average reduction in income of 2%; and
 - providers that do not feature either an ill or disabled manager (93%) see an average reduction in income of 4%.
- 2.42. The variation in impact experienced by providers employing an ill or disabled manager and those not employing an ill or disabled manager is not statistically significant.

National Impacts, solicitor / NfP

2.43. Table 5 in Annex 1 shows the impact of removing consumer from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 2.44. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 4% for solicitors and 0% for NfPs;
 - female owned and controlled providers see an average reduction in income of 4% for solicitors and 1% for NfPs; and
 - providers with split ownership and control see an average reduction in income of 3% for solicitors and 0% for NfPs.
- 2.45. Solicitors' firms saw a (3-4 percentage point) higher average impact than NfPs regardless of sex of majority ownership and control.
- 2.46. There was no statistically significant difference in impact between either solicitors' firms or NfPs based on sex of ownership and control.

Race

- 2.47. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers would see an average reduction in income of 3% for solicitors and 0% for NfPs;
 - BAME owned and controlled providers would see an average reduction in income of 7% for solicitors and 1% for NfPs; and
 - split ownership and control providers would see an average reduction in income of 5% for solicitors and 0% for NfPs.
- 2.48. Tests show that for both solicitor and NfP analyses there were no statistically significant differences in results.
- 2.49. NfP providers saw lower average impacts than solicitors' firms regardless of race of ownership and control.

Disability

- 2.50. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers employing an ill or disabled manager would see an average reduction in income of 2% for solicitors and 1% for NfPs; and
 - providers that do not employ an ill or disabled manager would see an average reduction in income of 4% for solicitors and 0% for NfPs.

2.51. In relation to NfPs, differences were statistically significant, though there were no statistically significant differences with regard to solicitors.

London / non-London impacts

2.52. Table 6 in Annex 1 shows the impact of removing consumer from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 2.53. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers would see an average reduction in income of 6% in London (53% of ownership) and 4% outside of London (73% of ownership);
 - female owned and controlled providers would see an average reduction in income of 14% in London (18% of ownership) and 1% outside of London (11% of ownership); and
 - providers with split ownership and control would see an average reduction in income of 4% in London (28% of ownership) and 3% outside of London (16% of ownership).
- 2.54. The analysis shows within London impacts are not statistically significant, whereas outside of London there is some statistically significant difference.
- 2.55. In London providers with majority female ownership and control saw a higher impact than providers with majority male ownership and control.

Race

- 2.56. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 6% in London (44% of ownership) and 3% outside of London (96% of ownership);
 - BAME owned and controlled providers see an average reduction in income of 8% in London (46% of ownership) and 1% outside of London (2% of ownership); and
 - split owned and controlled providers see an average reduction in income of 4% in London (10% of ownership) and 6% outside of London (1% of ownership).
- 2.57. The analysis shows that both inside and outside London impacts are largely consistent across the three groups and do not represent statistically significant disproportionate impacts.

Disability

2.58. It is not possible to conduct comparative analysis under this section due to the extremely small sample size of London providers employing an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Conclusions on provider impacts

- 2.59. The analysis has not shown any disproportionate impact between groups. In general terms, consumer law does not appear to make up a significant proportion of funding in any of the groups considered, reflected in the low average percentage income reductions seen.
- 2.60. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 2.18.

Option 3 – Remove debt matters where the client’s home is not at immediate risk from scope

Description

- 3.1. Under this option, all debt advice, except those matters where the client’s home is at immediate risk as a result of rent or mortgage arrears, would be removed from scope.

Legal duties

- 3.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 3.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 3.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people’s disabilities, even where that involves treating disabled people more favourably than other people.
- 3.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 3.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 3.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:
‘A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.’
- 3.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.

- 3.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 3.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 3.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and have concluded that they do not.

B. Indirect discrimination

- 3.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 3.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 3.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 3.15. In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.

- That having been said, it is estimated that female, BAME and ill or disabled clients comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
- The proportion of clients affected by the proposed changes that fall within this group is therefore likely to be high relative to their proportions in the population.
- The analysis also suggests that male clients see a greater impact when compared to the civil legal aid client base as a whole.

3.16. In summary, our initial analysis of impacts on providers is as follows:

- There appears to be a disproportionate impact on female owned and controlled providers under this proposal, as this group sees a significantly higher impact than their male counterparts.

3.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

3.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally the placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;

- the availability of alternative sources of funding e.g. CFAs; and
- the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on female clients, BAME clients and disabled people relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 3.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 3.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 3.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 3.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 3.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 3.24. **It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 3.25. Table 1 in Annex 1 shows the impact of removing debt matters where the client's home is not at immediate risk from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 3.26. Within the dataset there are a total of 52,376 claims for debt matters where the client's home is not at immediate risk, comprised of both Legal Help and Representation matters. Of these, 55% related to female clients, whilst 44% related to male clients.
- 3.27. The population is 51% female and 49% male. Women are therefore more likely to have a debt case where the client's home is not at immediate risk funded through legal aid than men when compared to the population as a whole.
- 3.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Women are therefore very slightly less likely, and men more likely, to have a debt case where the client's home is not at immediate risk when compared to the civil legal aid client base as a whole.

Race

- 3.29. Of the 52,376 claims in the dataset, 84% are by white clients, 11% for BAME clients, 2% have a recorded ethnicity of 'other', and in 3% of cases race was either unknown or not recorded.
- 3.30. The population is 92% white and 8% BAME. BAME clients are therefore more likely to have a debt case where the client's home is not at immediate risk funded through legal aid when compared to the population as a whole.
- 3.31. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not recorded. Compared with civil legal aid clients as a whole, clients with a debt case where their home is not at immediate risk are therefore more likely to be white and less likely to be BAME.

Disability

- 3.32. Of the 52,376 claims in the dataset, 30% related to clients with either an illness or disability, 62% related to those without any such illness or disability, with the remaining 8% unknown.
- 3.33. Of the total population of England and Wales 18% are disabled and 82% are not. Therefore, disabled people are more likely to have a debt case where the client's home is not at immediate risk funded through legal aid than people who are not disabled when compared to the population as a whole.
- 3.34. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. Therefore, due to the significant rate of non-response for all civil legal aid clients we are unable to be sure of any degree of overrepresentation of ill or disabled people in this category.
- 3.35. As part of the consultation we would be interested in hearing views on why disabled or ill clients are disproportionately represented in this particular category when compared to the population as a whole.

Conclusions on client impacts

- 3.36. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on ill or disabled people, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population. Analysis also shows that male clients see a potential disproportionate impact when compared to the civil legal aid client base as a whole.
- 3.37. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 3.18.

B. Providers

National impacts

- 3.38. Table 7 in Annex 1 shows the impact of removing debt cases where the client's home is not at immediate risk from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 3.39. Of the providers delivering debt services to clients whose home is not at immediate risk services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (51% of the total) see an average reduction in income of 4%;
 - female owned and controlled providers (29%) see an average reduction in income of 17%; and
 - providers with split ownership and control (20%) see an average reduction in income of 9%.
- 3.40. The analysis shows that there is a broad range of impacts when this category is modelled. Female owned and controlled providers see the statistically significant greater impact, with male owned and controlled providers seeing the least impact.

Race

- 3.41. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers (91% of the total) see an average reduction in income of 9%;
 - BAME owned and controlled providers (6%) see an average reduction in income of 5%; and

- split owned and controlled providers (3%) see an average reduction in income of 8%.

3.42. The variation in impact in this analysis is not statistically significant.

Disability

3.43. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager (7% of the total) see an average reduction in income of 10%; and
- providers that do not feature either an ill or disabled manager (93%) see an average reduction in income of 8%.

3.44. The analysis shows that the impacts are within 2 percentage points of one another and as such do not represent any statistically significant disproportionate impact.

National impacts, solicitor / NfP

3.45. Table 7 in Annex 1 shows the impact of removing debt matters where the client's home is not at immediate risk from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

3.46. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 2% for solicitors and 20% for NfPs;
- female owned and controlled providers see an average reduction in income of 3% for solicitors and 25% for NfPs; and
- providers with split ownership and control see an average reduction in income of 1% for solicitors and 27% for NfPs.

3.47. The analysis shows that the differentials between NfPs impacts are not statistically significant. In relation to solicitors, the differential in impact is statistically significant.

Race

3.48. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 2% for solicitors and 25% for NfPs;
- BAME owned and controlled providers see an average reduction in income of 4% for solicitors and 8% for NfPs; and
- split ownership and control providers see an average reduction in income of 0% for solicitors and 19% for NfPs.

3.49. In the analysis in respect of race, the differential between NfPs is statistically significant, whereas solicitor impacts are not.

Disability

- 3.50. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers featuring either an ill or disabled manager see an average reduction in income of 3% for solicitors and 18% for NfPs; and
 - providers that do not feature either an ill or disabled manager see an average reduction in income of 2% for solicitors and 25% for NfPs
- 3.51. The analysis shows that the differential between NfPs is statistically significant, whereas that for solicitors is not.

London / non-London impacts

3.52. Table 8 in Annex 1 shows the impact of removing debt matters where the client's home is not at immediate risk from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 3.53. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 5% in London (46% of ownership) and 4% outside of London (52% of ownership);
 - female owned and controlled providers see an average reduction in income of 10% in London (34% of ownership) and 18% outside of London (28% of ownership); and
 - providers with split ownership and control see an average reduction in income of 2% in London (20% of ownership) and 10% outside of London (20% of ownership).

In relation to London providers, the impacts for male and female owned providers are separated by a small margin and are not statistically significant. Outside of London, differences are statistically significant.

Race

- 3.54. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 7% in London (40% of ownership) and 9% outside of London (96% of ownership);
 - BAME owned and controlled providers see an average reduction in income of 5% in London (47% of ownership) and 5% outside of London (2% of ownership); and
 - split owned and controlled providers see an average reduction in income of 6% in London (13% of ownership) and 9% outside of London (2% of ownership).

- 3.55. The analysis shows that both within and outside of London, differences are not statistically significant.

Disability

- 3.56. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers featuring an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Conclusions on provider impacts

- 3.57. The main differential, that between female and male owned and controlled providers, is discussed above. Although it is not immediately clear from the data why this effect is seen, it is in all likelihood attributable to female owned and controlled providers in the sample having conduct of a higher volume of debt cases where the client's home is not at immediate risk as against their male counterparts.
- 3.58. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 3.18.

Option 4 – Remove employment from scope

Description

- 4.1 Under this option, all employment matters would no longer be retained within scope. Employment claims are generally dealt with via the employment Tribunal. Civil legal aid is currently available for advice (through Legal Help) in relation to a range of employment matters, such as unfair and wrongful dismissal, redundancy, employment contracts, strike action, data protection and employee confidentiality, terms and conditions and wages issues. Under current arrangements, legal aid is available for advice in respect of an Employment Tribunal claim (though not for advocacy before the Tribunal), and for both advice and representation for appeals to the Employment Appeal Tribunal. Advice and representation is also available for the small number of employment cases, for example, breach of contract, which are heard before the court rather than the tribunal. The vast majority of legal aid for employment cases is for Legal Help, rather than Legal Representation.

Legal duties

- 4.2 As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 4.3 The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 4.4 The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 4.5 In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 4.6 We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 4.7 Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:
'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'
- 4.8 The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 4.9 We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 4.10 We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 4.11 Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and have concluded that they do not.

B. Indirect discrimination

- 4.12 Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:
'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -
(a) A applies, or would apply, it to people with whom B does not share the characteristic,
(b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.'
- 4.13 The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.

- 4.14 Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 4.15 In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
 - That having been said, it is estimated that male and BAME clients comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
 - The proportion of clients affected by the proposed changes that fall within this group is therefore likely to be high relative to their proportions in the population.
- 4.16 In summary, our initial analysis of impacts on providers is as follows:
- In terms of sex, no significant impact is seen for one group over another.
 - In terms of race, BAME providers see a slightly higher impact than their white British counterparts.
- 4.17 In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:
- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
 - in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.
- 4.18 In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:
- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
 - In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
 - In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally the placed to provide good solutions.

- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on male and BAME clients relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 4.19 We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 4.20 We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 4.21 We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 4.22 In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 4.23 But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 4.24 It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 4.25 Table 1 in Annex 1 shows the impact of removing employment from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 4.26 Within the dataset there are a total of 11,475 claims in employment, comprised of both Legal Help and Representation matters. Of these, 45% were for female clients and 55% for male clients.
- 4.27 The population is 51% female and 49% male. Women are therefore less likely to have an employment case funded through legal aid than men as against the population as a whole.
- 4.28 Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Therefore, women make up a significantly lower proportion of employment clients when compared with the civil legal aid client base as a whole.

Race

- 4.29 Of the 11,475 claims in the dataset, 71% were for white clients, 24% for BAME clients, with 5% of cases where race was either unknown or not recorded.
- 4.30 The population is 92% white and 8% BAME. BAME clients are therefore more likely to have an employment case funded through legal aid when compared with the population as a whole.
- 4.31 Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not known. Due to the relatively high proportion of clients with a recorded race of unknown, it is not possible to draw robust conclusions when comparing against the civil legal aid client base as a whole.

Disability

- 4.32 Of the 11,475 claims in the dataset, 9% were for clients who were ill or disabled, with 80% for clients who were not ill or disabled and in the remaining 12% of cases it was not known whether the client was ill or disabled.
- 4.33 Of the total population of the England and Wales, 18% are disabled and 82% are not. The significant non-response rate for disability characteristics in this category means that it is not possible to make direct comparisons with the population as a whole.
- 4.34 Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. Due to the significant non-response rate it is not possible to make direct comparisons between the Employment client group and the civil legal aid client base as a whole.

Conclusions on client impacts

- 4.35 Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on male and BAME clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population.
- 4.36 Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 4.18.

B. Providers

National impacts

- 4.37 Table 9 in Annex 1 shows the impact of removing employment from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 4.38 Of the providers delivering employment services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (63% of the total) see an average reduction in income of 4%;
 - female owned and controlled providers (18%) see an average reduction in income of 5%; and
 - providers with split ownership and control (20%) see an average reduction in income of 2%.
- 4.39 The analysis shows that, whilst there is some differential impact, the variation is minimal, though the difference is statistically significant.

Race

- 4.40 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers (92% of the total) see an average reduction in income of 4%;
 - BAME owned and controlled providers (7%) see an average reduction in income of 7%; and
 - split owned and controlled providers (1%) see an average reduction in income of 2%.

- 4.41 The analysis shows that there is a small differential impact within the three groups, and at least in relation to BAME and split ownership this difference is not statistically significant.

Disability

- 4.42 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers featuring either an ill or disabled manager (6% of the total) see an average reduction in income of 6%; and
 - providers that do not feature either an ill or disabled manager (94%) see an average reduction in income of 4%.

- 4.43 The analysis shows that there is no statistically significant differential between the two groups.

National impacts, solicitor / NfP

- 4.44 Table 9 in Annex 1 shows the impact of removing employment from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 4.45 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 2% for solicitors and 17% for NfPs;
 - female owned and controlled providers see an average reduction in income of 3% for solicitors and 7% for NfPs; and
 - providers with split ownership and control see an average reduction in income of 1% for solicitors and 8% for NfPs.
- 4.46 The analysis shows that the differential between NfPs is statistically significant, whereas for solicitors it is not.

Race

- 4.47 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 2% for solicitors and 11% for NfPs;
 - BAME owned and controlled providers see an average reduction in income of 5% for solicitors and 10% for NfPs; and
 - split ownership and control cannot be compared due to small sample sizes.
- 4.48 The analysis shows that there is a slightly greater impact on BAME owned and controlled solicitor providers, though for both solicitor and NfP providers the differences are not statistically significant.

Disability

- 4.49 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers featuring either an ill or disabled manager see an average reduction in income of 2% for solicitors and 10% for NfPs; and
 - providers that do not feature either an ill or disabled manager see an average reduction in income of 2% for solicitors and 11% for NfPs.
- 4.50 The analysis shows that there are no statistical differences within the two groups (solicitors and NfPs), and that the differential between the two groups is likely to be driven by a greater proportion of NfP funding, on average, being derived from this category.

London / non-London impacts

- 4.51 Table 10 in Annex 1 shows the impact of removing employment from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 4.52 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 11% in London (46% of ownership) and 4% outside of London (65% of ownership);
 - female owned and controlled providers see an average reduction in income of 6% in London (24% of ownership) and 5% outside of London (17% of ownership); and
 - providers with split ownership and control see an average reduction in income of 4% in London (30% of ownership) and 2% outside of London (18% of ownership).
- 4.53 The analysis shows that both within and outside of London, differences are not statistically significant.

Race

- 4.54 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 6% in London (53% of ownership) and 4% outside of London (98% of ownership);
 - BAME owned and controlled providers see an average reduction in income of 8% in London (47% of ownership) and 2% outside of London (1% of ownership); and
 - there were no split owned and controlled providers in London and those outside of London (1% of ownership) saw an average reduction of 2%.
- 4.55 The analysis demonstrates that impacts both within and between groups are very narrow, and are not statistically significant.

Disability

- 4.56 If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers featuring either an ill or disabled manager see an average reduction in income of 9% in London (18% of ownership) and 4% outside of London (5% of ownership); and
 - providers that do not feature either an ill or disabled manager see an average reduction in income of 7% in London (83% of ownership) and 4% outside of London (95% of ownership).
- 4.57 The analysis shows that, within groups, impacts are narrow and not statistically significant.

Conclusions on provider impacts

- 4.58 The main differential, that between BAME and white British / split owned and controlled providers, is discussed above.
- 4.59 Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 4.18.

Option 5 – Remove education from scope (including Upper Tribunal appeals)

Description

- 5.1. Under this option, all education matters would no longer be retained within scope. The legal aid scheme currently funds Legal Help (initial advice and assistance) on a range of educational matters, such as school admissions and exclusions, out of school provision, bullying, school and nursery reorganisation proposals, and student disputes with universities and further education institutions. It also includes advice on appealing to the First-tier (Special Educational Needs and Disability) Tribunal and the Special Educational Needs Tribunals for Wales. Legal aid also funds advocacy on appeals from the First-tier (Special Educational Needs and Disability) Tribunal, to the Upper Tribunal, and higher courts. Legal aid is also available for advice and advocacy to bring civil law actions for issues such as damages for negligence, and actions for breach of contract in provision of education services.

Legal duties

- 5.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 5.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 5.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 5.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 5.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 5.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:
'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'
- 5.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 5.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 5.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 5.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 5.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:
'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -
- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
 - (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
 - (c) it puts, or would put, B at that disadvantage, and*
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*
- 5.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.

- 5.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 5.15. In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
 - That having been said, it is estimated that female and BAME clients comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
 - The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.
- 5.16. In summary, our initial analysis of impacts on providers is as follows:
- In terms of sex, female owned and controlled providers see a greater reduction in income than their male counterparts.
- 5.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:
- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
 - in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.
- 5.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:
- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
 - In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
 - In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
 - We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic,

European and international legal obligations and have taken into account the following factors:

- the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
 - Moreover, insofar as the proposed changes may have a greater effect on female and BAME individuals relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 5.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 5.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 5.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 5.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 5.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 5.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 5.25. Table 1 in Annex 1 shows the impact of removing education from scope on clients. Data is held on the client who instructs the solicitor, and in cases where parents instruct solicitors on behalf of their children we do not hold equalities data on the child. The analysis shows the following in relation to equalities:

Sex

- 5.26. Within the dataset there are a total of 2,180 claims in education, comprised of both Legal Help and Representation matters. Of these, 73% were for female clients, and 27% were for male clients.
- 5.27. The population is 51% female and 49% male. Women are therefore significantly more likely to have an education case funded through legal aid than men when compared to the population as a whole.
- 5.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Therefore women were also over-represented in education when compared to all civil legal aid clients.
- 5.29. It is important to note that in this category of law details about the parent instructing a solicitor on behalf of a child are collected, rather than details of the child receiving the service. Therefore this finding indicates that the parent instructing the solicitor is more likely to be female.

Race

- 5.30. Of the 2,180 claims in the dataset, 53% were by white clients, 31% were by BAME clients and 16% for cases where the client's race was either unknown or not recorded.
- 5.31. The population is 92% white and 8% BAME. BAME clients are therefore more likely to have an Education case funded through legal aid when compared to the population as a whole, although levels of non-response make direct comparisons difficult.
- 5.32. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not recorded. The levels of non-response mean that a reliable comparison cannot be made between all civil legal aid clients and those with an Education case.

Disability

- 5.33. Of the 2,180 claims in the dataset, 16% were for clients with an illness or disability, 62% for clients without any such illness or disability, whilst the disability status of 22% of clients was unknown or unrecorded.

- 5.34. Of the total population of the England and Wales, 18% are disabled and 82% are not. The significant level of non response means that it is not possible to make comparisons between the Education client group and the population for illness or disability.
- 5.35. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not recorded whether they are ill or disabled. The significant level of non response means that it is not possible to make comparisons between the education client group and the civil legal aid client base as a whole for illness or disability.

Conclusions on Client impacts

- 5.36. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on women, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population.
- 5.37. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 5.18.

B. Providers

National impacts

- 5.38. Table 11 in Annex 1 shows the impact of removing education from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 5.39. Of the providers delivering services in education that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (63% of the total) see an average reduction in income of 3%;
 - female owned and controlled providers (20%) see an average reduction in income of 9%; and
 - providers with split ownership and control (17%) see an average reduction in income of 2%.
- 5.40. The analysis shows that there is a statistically significant difference between male and female providers.

Race

- 5.41. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of BAME owned and controlled providers within the

data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Disability

- 5.42. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers within the data employing an ill or disabled manager. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

National Impacts, solicitor / NfP

- 5.43. Table 11 in Annex 1 shows the impact of removing Education from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 5.44. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 3% for solicitors and 0% for NfPs;
 - female owned and controlled providers see an average reduction in income of 9% for solicitors and 9% for NfPs; and
 - split ownership and control see an average reduction in income of 1% for solicitors and 11% for NfPs
- 5.45. The analysis shows that for both solicitor and NfP providers, differentials are not statistically significant.

Race

- 5.46. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of BAME owned and controlled providers within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Disability

- 5.47. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers within the data employing an ill or disabled manager. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

London / non-London impacts

- 5.48. Table 12 in Annex 1 shows the impact of removing Education from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 5.49. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 4% in London (43% of ownership) and 2% outside of London (67% of ownership);
 - female owned and controlled providers see an average reduction in income of 7% in London (29% of ownership) and 10% outside of London (19% of ownership); and
 - providers with split ownership and control see an average reduction in income of 6% in London (29% of ownership) and 1% outside of London (14% of ownership).
- 5.50. The analysis shows that differences within London are not statistically significant, whereas outside of London the differential in impacts are statistically significant.

Race

- 5.51. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of BAME owned and controlled providers within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Disability

- 5.52. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers employing an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Conclusions on provider impacts

- 5.53. The main differential, that between female and male owned and controlled providers, is discussed above.
- 5.54. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 5.18.

Option 6 – Remove non-homelessness housing matters (excluding non-damages disrepair) from scope

Description

- 6.1. Under this option, all housing matters that do not relate to homelessness, or cases where the litigants are seeking remedy for serious disrepairs that threaten health, would no longer be retained within scope. These cases include a variety of issues, such as:
- an action to enforce a Right to Buy;
 - an action to enforce a right to buy a freehold or extend the lease;
 - actions to set aside a legal charge (for example, a mortgage) or the transfer of a property;
 - actions for damages and / or an injunction for unauthorised change of use of premises;
 - an action under the Housing Grants, Construction and Regeneration Act 1996;
 - applications for a new tenancy under the Landlord and Tenant Act 1954;
 - an action for re-housing;
 - an action under the Access to Neighbouring Land Act 1992;
 - an action for wrongful breach of quiet enjoyment;
 - housing disrepair proceedings where the primary remedy sought is damages, including damages for personal injury;
 - an action for trespass; or
 - an action under the Mobile Homes Act 1983 which does not concern eviction.

Legal duties

- 6.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 6.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 6.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.

- 6.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 6.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 6.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

‘A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.’

- 6.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 6.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is ‘no’: these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 6.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 6.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 6.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

‘(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

‘(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*

- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 6.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 6.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 6.15. In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
 - That having been said, it is estimated that female, BAME and disabled clients comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
 - The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.
- 6.16. In summary, our initial analysis of impacts on providers is as follows:
- In terms of sex, female owned and controlled providers see a slightly greater impact than their male counterparts under this proposal.
 - In terms of race, BAME owned and controlled providers see a slightly greater impact than their white British counterparts.
- 6.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:
- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
 - in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

- 6.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:
- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
 - In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
 - In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
 - We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
 - There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
 - Moreover, insofar as the proposed changes may have a greater effect on female, BAME and disabled clients relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 6.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 6.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 6.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding

which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.

- 6.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 6.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 6.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 6.25. Table 1 in Annex 1 shows the impact of removing non-homelessness housing from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 6.26. Within the dataset there are a total of 25,333 relevant claims relating to non-homelessness housing cases, comprised of both Legal Help and Representation matters. Of these, 60% were for female clients, 39% for male clients, and in 1% of cases the sex of the client was unknown.
- 6.27. The population is 51% female and 49% male. Women are therefore more likely to have a housing case funded through legal aid than men when compared to the population as a whole.
- 6.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Therefore, housing clients are slightly more likely to be women when compared to civil legal aid clients as a whole.

Race

- 6.29. Of the 25,333 claims in the dataset, 62% were for white clients, 31% for BAME clients, 8% by clients where race was recorded as 'other', and in 7% of cases race was not recorded.
- 6.30. The population is 92% white and 8% BAME. BAME clients are therefore more likely to have a housing case funded through legal aid when compared to the population as a whole.
- 6.31. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not recorded. The significant proportion of non-response rates means that comparisons with the civil legal aid client base as a whole cannot be made.

Disability

- 6.32. Of the 25,333 claims in the dataset, 27% related to those with either an illness or disability, with 58% relating to those without any such illness or disability, with the remainder (15%) unknown or unrecorded.
- 6.33. Of the total population of the England and Wales 18% are disabled and 82% are not. Therefore, disabled people are more likely to have a housing case funded through legal aid than people who are not disabled.
- 6.34. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. The significant proportion of claims with no disability characteristic recorded means that it is not possible to compare clients in the housing category with legal aid clients as a whole.
- 6.35. It is possible that disability status would drive this high proportion seen within this category as disabled people may have more housing issues to resolve because of particular housing needs, and it is likely that advice may be being sought on issues such as housing benefit, where the individual is no longer able to work as a consequence of disability status. Views are invited from respondents on this issue.

Conclusions on client impacts

- 6.36. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on female, BAME and ill or disabled clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population, although female client representation in these cases is broadly in line with the civil legal aid client base as a whole.
- 6.37. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 6.18.

B. Providers

National Impacts

- 6.38. Table 13 in Annex 1 shows the impact of removing non-homelessness housing from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 6.39. Of the providers delivering non-homelessness housing matters services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (58% of the total) see an average reduction in income of 2%;

- female owned and controlled providers (22%) see an average reduction in income of 4%; and
- providers with split ownership and control (20%) see an average reduction in income of 3%.

6.40. The analysis shows that the female owned and controlled providers would see a slightly greater impact than their male and split ownership counterparts, and whilst this difference is minimal, it is statistically significant.

Race

6.41. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers (84% of the total) see an average reduction in income of 2%;
- BAME owned and controlled providers (12%) see an average reduction in income of 5%; and
- split owned and controlled providers (4%) see an average reduction in income of 5%.

6.42. The analysis shows that the BAME and split owned and controlled providers would see a slightly higher impact than their white British counterparts (3 percentage points), and though this difference is minimal it is statistically significant.

Disability

6.43. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager (7% of the total) see an average reduction in income of 4%; and
- providers that do not feature either an ill or disabled manager (93%) see an average reduction in income of 3%.

6.44. The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups.

National impacts, solicitor / NfP

6.45. Table 13 in Annex 1 shows the impact of removing non-homelessness Housing from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

6.46. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 1% for solicitors and 9% for NfPs;
- female owned and controlled providers see an average reduction in income of 2% for solicitors and 6% for NfPs; and

- providers with split ownership and control see an average reduction in income of 2% for solicitors and 9% for NfPs.

6.47. The analysis shows that for both solicitor and NfP organisations, differences were statistically significant.

Race

6.48. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 1% for solicitors and 7% for NfPs;
- BAME owned and controlled providers see an average reduction in income of 4% for solicitors and 9% for NfPs; and
- split ownership and control providers see an average reduction in income of 3% for solicitors and 10% for NfPs.

6.49. The analysis shows that differences between NfP providers were not statistically significant, whereas for solicitor providers the differential was statistically significant.

Disability

6.50. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 2% for solicitors and 7% for NfPs; and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 2% for solicitors and 8% for NfPs.

6.51. The analysis shows that differences were not statistically different for either solicitor or NfP providers.

London / non-London impacts

6.52. Table 14 in Annex 1 shows the impact of removing non-homelessness housing from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

6.53. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 4% in London (48% of ownership) and 2% outside of London (60% of ownership);
- female owned and controlled providers see an average reduction in income of 4% in London (27% of ownership) and 4% outside of London (21% of ownership); and
- providers with split ownership and control see an average reduction in income of 6% in London (26% of ownership) and 3% outside of London (19% of ownership).

6.54. The analysis shows that within London differentials were statistically significant, but this was not the case outside of London.

Race

- 6.55. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 3% in London (45% of ownership) and 2% outside of London (94% of ownership);
 - BAME owned and controlled providers see an average reduction in income of 5% in London (44% of ownership) and 3% outside of London (4% of ownership); and
 - split owned and controlled providers see an average reduction in income of 6% in London (11% of ownership) and 4% outside of London (3% of ownership).
- 6.56. The analysis shows that, within London and outside of London, the impacts are within a narrow range, with no statistically significant differential.

Disability

- 6.57. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- providers featuring either an ill or disabled manager see an average reduction in income of 7% in London (9% of ownership) and 3% outside of London (6% of ownership); and
 - providers that do not feature either an ill or disabled manager see an average reduction in income of 4% in London (91% of ownership) and 2% outside of London (94% of ownership).
- 6.58. The analysis shows that within London providers experience statistically significant differences in impacts, but not outside of London.

Conclusions on provider impacts

- 6.59. The main differentials seen, those between female and male owned and controlled providers, and those between BAME and white British owned and controlled providers, are discussed.
- 6.60. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 6.18.

Option 7 – Remove welfare benefits advice from scope

Description

- 7.1. Under this option, all welfare benefits matters would no longer be retained within scope. Legal aid currently funds legal advice in relation to decisions about benefits such as disability living or attendance allowance, incapacity benefits, income support and housing benefit. This includes advice (but not advocacy) for appeals to the First-tier (Social Security) Tribunal. These appeals concern, for example, cases where a benefit has been refused, or cases dealing with overpayments. Legal aid is not currently available for onward appeals to the Upper Tribunal. It is also available to assist asylum seekers and failed asylum seekers and their dependants with applications for asylum support under sections 4 and 95 of the Immigration and Asylum Act 1999. The vast majority of legal aid funding in this area of law is spent on Legal Help, rather than Legal Representation.

Legal duties

- 7.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 7.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 7.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 7.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 7.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 7.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 7.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 7.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 7.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 7.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and have concluded that they do not.

B. Indirect discrimination

- 7.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 7.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 7.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.

- 7.15. In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
 - That having been said, it is estimated that female, BAME and ill or disabled clients comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
 - The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.
 - The analysis also suggests that male clients see a potential greater impact when compared to the civil legal aid client base as a whole.
- 7.16. In summary, our initial analysis of impacts on providers is as follows:
- In terms of sex, female owned and controlled providers see a significantly greater impact than their male counterparts.
 - No disproportionate impact is seen in relation to race.
 - In terms of illness or disability, a significantly greater impact is seen for those providers employing an ill or disabled manager.
- 7.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:
- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
 - in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.
- 7.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:
- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
 - In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
 - In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.

- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on female and BAME clients and disabled people relative to the overall population, this is an inevitable effect of the composition of the client base for civil legal aid.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 7.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 7.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 7.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 7.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 7.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 7.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 7.25. Table 1 in Annex 1 shows the impact of removing welfare benefits advice from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 7.26. Within the dataset there are a total of 113,279 relevant claims in the welfare benefits category. Of these, 54% were for female clients and 46% for male clients.
- 7.27. The population is 51% female and 49% male. Women are therefore slightly more likely to have a welfare benefits case funded through legal aid than men as against the population as a whole.
- 7.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Therefore, compared with the civil legal aid client base as a whole, women make up a smaller proportion of welfare benefits clients.

Race

- 7.29. Of the 113,279 claims in the dataset, 70% were for white clients, 27% for BAME clients and in 4% of cases race was either unknown or not recorded.
- 7.30. The population is 92% white and 8% BAME. BAME clients are therefore more likely to have a welfare benefits case funded through legal aid compared to the population as a whole.
- 7.31. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not known. Due to the significant proportion of clients for whom race information is not held, it is not possible to make comparisons with the civil legal aid client base as a whole.

Disability

- 7.32. Of the 113,279 claims in the dataset, 63% were for clients who were ill or disabled, 29% for clients who were not ill or disabled, and in 7% of cases it is not known whether the client was ill or disabled.
- 7.33. Of the total population of the England and Wales 18% are disabled and 82% are not. Therefore, disabled people are more likely to have a welfare benefits case funded through legal aid compared with the population as a whole.
- 7.34. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. Therefore, when compared against all civil legal aid clients, ill and disabled people are significantly over-represented in the welfare benefits category of work.

- 7.35. This is not an unexpected finding; given that the ill or disabled are more likely to be in a position where benefits are a factor, a higher proportion than the national average is anticipated within this category.

Conclusions on client impacts

- 7.36. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential significant disproportionate impact on ill or disabled people, female clients and BAME clients in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population. The analysis also suggests that male clients see a slight potential disproportionate impact, on the basis that they are overrepresented in this category when compared to the civil legal aid client base as a whole.
- 7.37. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 7.18.

B. Providers

National impacts

- 7.38. Table 15 in Annex 1 shows the impact of removing welfare benefits advice from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 7.39. Of the providers delivering welfare benefits advice services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (45% of the total) see an average reduction in income of 12%;
 - female owned and controlled providers (34%) see an average reduction in income of 33%; and
 - providers with split ownership and control (21%) see an average reduction in income of 20%.
- 7.40. The analysis shows that impacts are spread across a broad range, with male owned and controlled providers experiencing the least impact, and female owned and controlled providers seeing the largest impact. Differences are statistically significant.

Race

- 7.41. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers (84% of the total) see an average reduction in income of 21%;
- BAME owned and controlled providers (11%) see an average reduction in income of 22%; and
- split owned and controlled providers (5%) see an average reduction in income of 16%.

7.42. The analysis shows that for white British and BAME groups the differential is narrow with no statistically significant differences.

Disability

7.43. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers employing an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

National impacts, solicitor / NfP

7.44. Table 15 in Annex 1 shows the impact of removing welfare benefits advice from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 7.45. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 4% for solicitors and 39% for NfPs;
 - female owned and controlled providers see an average reduction in income of 7% for solicitors and 43% for NfPs; and
 - providers with split ownership and control see an average reduction in income of 7% for solicitors and 38% for NfPs.
- 7.46. The analysis shows that, for both solicitor and NfP providers, differences were not statistically significant.

Race

- 7.47. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 4% for solicitors and 41% for NfPs;
 - BAME owned and controlled providers see an average reduction in income of 9% for solicitors and 39% for NfPs; and
 - split ownership and control providers see an average reduction in income of 6% for solicitors and 32% for NfPs.
- 7.48. The analysis shows that differences between NfP providers were not statistically significant, whereas for solicitor providers, differences were statistically significant.

Disability

- 7.49. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers employing an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

London / non-London impacts

- 7.50. Table 16 in Annex 1 shows the impact of removing welfare benefits advice from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 7.51. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 21% in London (46% of ownership) and 11% outside of London (45% of ownership);
 - female owned and controlled providers see an average reduction in income of 21% in London (32% of ownership) and 36% outside of London (34% of ownership); and
 - providers with split ownership and control see an average reduction in income of 18% in London (23% of ownership) and 20% outside of London (21% of ownership).
- 7.52. Within London the impacts are within a narrow range featuring no statistically significant differences. Outside of London a far greater impact is seen on female owned and controlled providers, with this impact being statistically significant.

Race

- 7.53. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- 7.54. Of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 23% in London (42% of ownership) and 21% outside of London (93% of ownership);
 - BAME owned and controlled providers see an average reduction in income of 19% in London (43% of ownership) and 27% outside of London (5% of ownership); and
 - split owned and controlled providers see an average reduction in income of 16% in London (14% of ownership) and 18% outside of London (3% of ownership).
- 7.55. The analysis shows that, within London and outside of London, impacts between BAME and white British groups are relatively narrow with no statistically significant differences.

Disability

- 7.56. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers employing an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

Conclusions on provider impacts

- 7.57. The main differentials, those between female and male owned and controlled providers, and providers featuring an ill or disabled manager and those who do not, are discussed above. This implies that both groups seeing a greater impact are more likely to have conduct of cases in the welfare benefits category (and be more reliant on this income) than those who see a lower impact.
- 7.58. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 7.18.

Option 8 – Remove non-detention immigration from scope

Description

- 8.1. Under this option, all immigration matters that do not relate to an individual's detention would no longer be retained within scope. These include:
- Grant / variation of leave to remain: this covers advice and representation in relation to an application for a non-asylum grant of leave to remain, and an application to vary or extend that leave;
 - Entry clearance applications: this covers advice and representation in relation to applications for leave to enter the United Kingdom, including but not limited to employment, visits, students, training and work experience. It also includes applications for entry clearance for refugee family reunion;
 - European applications: this covers advice to an European Economic Area national and their dependents wishing to live, work or study in the United Kingdom;
 - Citizenship and travel documents: advice to applicants wishing to apply for British Citizenship, or who require a travel document and are unable to obtain one from their own state; and
 - Applications under concessions or policy outside of the Immigration Rules: this covers any application made which does not relate to a defined category within the Immigration Rules (HC395).

Legal duties

- 8.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 8.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 8.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 8.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.

- 8.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 8.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 8.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 8.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 8.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 8.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 8.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 8.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 8.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 8.15. In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
 - That having been said, it is estimated that male and BAME clients comprise a higher share of the present client base of civil legal aid recipients in non-detention immigration matters than of the total population.
 - The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.
- 8.16. In summary, our initial analysis of impacts on providers is as follows:
- In terms of sex, no disproportionate impact is seen.
 - In terms of race, BAME and split owned and controlled providers see a greater impact than their white British counterparts.
- 8.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:
- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
 - in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and is therefore justified for the reasons which we explain below.
- 8.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:
- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
 - In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most

need help in accessing justice, in matters where legal advice or representation is really needed.

- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on male and BAME clients relative to the population as a whole, this is an inevitable effect of the composition of the client base for civil legal aid.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 8.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 8.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 8.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 8.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 8.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the

circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

8.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.

8.25. Table 2 in Annex 1 shows the impact on clients of removing non-detention immigration from scope. The analysis shows the following in relation to equalities:

Sex

8.26. Within the dataset there are a total of 99,688 claims relating to non-detention immigration matters in the Immigration category, comprised of both Legal Help and Controlled Legal Representation matters. Of these, 39% related to female clients, whilst 61% related to male clients.

8.27. The population is 51% female and 49% male. Men are therefore more likely to have a non-detention immigration case funded through legal aid when compared to the population as a whole.

8.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Therefore, compared with the civil legal client base as a whole, men are significantly over-represented in the non-detention immigration category.

Race

8.29. Of the 99,688 claims in the dataset, 6% were for white clients, 85% for BAME clients and in 9% of cases race was either unknown or not recorded.

8.30. The population is 92% white and 8%. BAME clients are therefore significantly more likely to have a non-detention immigration case funded through legal aid.

8.31. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not known. Therefore, while BAME people make up a greater proportion of civil legal clients than the general population, they are particularly over-represented in the non-detention immigration category.

8.32. A far greater number of BAME clients are affected under these proposals. This is to be anticipated given the nature of the services being provided in this category and the related demographics of the client group.

Disability

8.33. Of the 99,688 claims in the dataset, 3% related to those with either an illness or disability, with 69% relating to those without any such illness or disability, with 28% unknown or unrecorded.

- 8.34. Of the total population of England and Wales 18% are disabled and 82% are not. Therefore, the significant number of clients for whom disability information is not known means comparisons cannot be reliably drawn.
- 8.35. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled.
- 8.36. The analysis shows that the disabled clients are not more highly represented within the Immigration category than in civil legal aid cases as a whole, though again due to the significant number of non-returns reliable conclusions cannot be drawn.

Conclusions - Client Impacts

- 8.37. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on male and BAME clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population.
- 8.38. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 8.18.

B. Providers

National Impacts

- 8.39. Table 17 in Annex 1 shows the impact of removing non-detention immigration from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 8.40. Of the providers delivering non-detention immigration services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (50% of the total) see an average reduction in income of 19%;
 - female owned and controlled providers (28%) see an average reduction in income of 19%; and
 - providers with split ownership and control (22%) see an average reduction in income of 19%.
- 8.41. The analysis shows that the impacts are similar, with no statistically significant difference.

Race

- 8.42. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers (44% of the total) see an average reduction in income of 14%; and
- BAME owned and controlled providers (53%) see an average reduction in income of 21%; and
- split owned and controlled providers (6%) see an average reduction in income of 30%

8.43. The analysis shows that there are statistically significant differences between the three groups, with the greatest impact seen on split ownership and control, as well as BAME experiencing a greater impact than white British counterparts.

Disability

8.44. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers featuring an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

National impacts, solicitor / NfP

8.45. Table 17 in Annex 1 shows the impact of removing non-detention immigration from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities.

Sex

- 8.46. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 18% for solicitors and 24% for NfPs;
 - female owned and controlled providers see an average reduction in income of 18% for solicitors and 21% for NfPs; and
 - providers with split ownership and control see an average reduction in income of 16% for solicitors and 32% for NfPs.
- 8.47. In relation to female both solicitor and NfP organisations, the analysis shows that impacts are within a narrow range and differences are not statistically significant.

Race

- 8.48. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 13% for solicitors and 17% for NfPs;
 - BAME owned and controlled providers see an average reduction in income of 19% for solicitors and 29% for NfPs; and
 - split ownership and control providers see an average reduction in income of 26% for solicitors and 40% for NfPs.

8.49. The analysis shows that NfP impacts are not statistically significant, whereas differences for providers are statistically significant.

Disability

8.50. It is not possible to conduct comparative analysis under this head due to the extremely small sample size of providers employing an ill or disabled manager within the data. This small sample size may also allow the identification of individual providers within the analysis which has data protection implications.

London / non-London impacts

8.51. Table 18 in Annex 1 shows the impact of removing non-detention immigration from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities.

Sex

- 8.52. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 20% in London (48% of ownership) and 18% outside of London (52% of ownership);
 - female owned and controlled providers see an average reduction in income of 17% in London (28% of ownership) and 21% outside of London (29% of ownership); and
 - providers with split ownership and control see an average reduction in income of 18% in London (24% of ownership) and 20% outside of London (19% of ownership).
- 8.53. The analysis shows that male ownership and control providers feature a slightly higher impact than their female and split ownership counterparts, though this difference was not statistically significant, both within and outside of London.

Race

- 8.54. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 14% in London (23% of ownership) and 14% outside of London (67% of ownership);
 - BAME owned and controlled providers see an average reduction in income of 19% in London (73% of ownership) and 29% outside of London (25% of ownership); and
 - a small sample size for split owned and controlled providers means that is not possible to conduct comparative analysis for this group.
- 8.55. The analysis demonstrates that, in respect of London providers, there is a slightly greater impact in relation to BAME which is not statistically significant. Outside of London, the differential impact seen was statistically significant.

Disability

- 8.56. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- provides featuring either an ill or disabled manager see an average reduction in income of 8% in London (8% of ownership) and 14% outside of London (13% of ownership); and
 - providers that do not feature either an ill or disabled manager see an average reduction in income of 19% in London (92% of ownership) and 20% outside of London (87% of ownership).
- 8.57. The analysis indicates that both within and outside of London differences were not statistically significant.

Conclusions on provider impacts

- 8.58. The main differential, that between BAME / split owned and controlled providers, as against their white British counterparts, is discussed above. This implies that both groups seeing a greater impact are more likely to have conduct of non-detention cases in the Immigration category (and be more reliant on this income) than those who see a lower impact.
- 8.59. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 8.18.

Option 9 – Remove family private (excluding domestic violence and child abduction) from scope

Description

- 9.1. Under this option, all family private matters, excluding those matters relating to domestic violence and child abduction, would no longer be retained in scope. These cases cover a range of issues, including:
- orders for child contact and / or residence;
 - parental responsibility orders;
 - prohibited steps or specific issue orders;
 - parenting orders;
 - adoption;
 - family maintenance;
 - divorce, ancillary relief, judicial separation, nullity and dissolution of civil partnership

Legal duties

- 9.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 9.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 9.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 9.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 9.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider

whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

9.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

9.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.

9.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.

9.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.

9.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

9.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

9.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the

case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.

- 9.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 9.15. In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
 - That having been said, it is estimated that women and BAME clients comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
 - The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.
- 9.16. In summary, our initial analysis of impacts on providers is as follows:
- In terms of sex, male owned and controlled providers see the greatest impact
 - In terms of race, white British owned and controlled providers see the greatest impact
- 9.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:
- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people with the protected characteristic of gender reassignment, at a particular disadvantage, though married people and those in a civil partnership would necessarily be affected by elements of the proposal e.g. the proposed removal of divorce and ancillary relief from scope; and
 - in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.
- 9.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:
- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
 - In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.

- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on women and BAME clients relative to the population as a whole, this is an inevitable effect of the composition of the client base for civil legal aid in this category.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 9.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 9.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 9.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 9.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 9.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 9.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 9.25. Table 2 in Annex 1 shows the impact of removing family private (excluding domestic violence and child abduction) from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 9.26. Within the dataset there are a total of 293,465 relevant claims in the Family Private category (excluding domestic violence and child abduction cases), comprised of both Legal Help and Representation matters. Of these, 65% were for female clients, while 34% were for male clients, with 1% unknown or unrecorded.
- 9.27. The population is 51% female and 49% male. Women are therefore more likely to have a Family Private (excluding domestic violence and child abduction) case funded through legal aid than men when compared to the population as whole.
- 9.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Female clients are therefore over-represented within the Family Private category (excluding domestic violence and child abduction) when compared with civil legal aid clients as a whole. This finding is expected in the context of the Family Private category.

Race

- 9.29. Of the 293,465 claims in the dataset, 76% were for white clients, 11% for BAME clients and in 13% of cases race was either unknown or not recorded.
- 9.30. The population is 92% white and 8% BAME. BAME clients are therefore slightly more likely to have a case within the Family Private category, though the degree of overrepresentation cannot be conclusively identified due to the significant proportion of clients for whom race is either unknown or unrecorded.
- 9.31. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not known. Due to the significant proportion of clients for whom race is either unknown or unrecorded, it is not possible to determine the extent of overrepresentation with one group or another.

Disability

- 9.32. Of the 293,465 claims in the dataset, 7% related to those with either an illness or disability, with 72% relating to those without any illness or disability, whilst 21% were either unknown or unrecorded.
- 9.33. Of the total population of England and Wales 18% are disabled and 82% are not. Therefore, due to the high level of non-response comparisons cannot be made between the population and family civil legal aid clients.

- 9.34. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. Because of the high levels of non-response, therefore, comparisons cannot be made between family clients and civil legal aid clients as a whole.

Conclusions on client impacts

- 9.35. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on women and BAME clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population.
- 9.36. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there any mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 9.18.

B. Providers

National impacts

- 9.37. Table 19 in Annex 1 shows the impact of removing Family Private (excluding domestic violence and child abduction) from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities.

Sex

- 9.38. Of the providers delivering Family Private (excluding domestic violence and child abduction) services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (67% of the total) would experience an average reduction in income of 53%;
 - female owned and controlled providers (17%) would experience an average reduction in income of 48%; and
 - providers with split ownership and control (17%) would experience an average reduction in income of 51%.
- 9.39. The analysis shows that male ownership and control providers experience a greater impact than their female counterparts, which is statistically significant.

Race

- 9.40. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers (90% of the total) see an average reduction in income of 53%;
 - BAME owned and controlled providers (6%) see an average reduction in income of 35%; and

- split owned and controlled providers (4%) see an average reduction in income of 46%.

9.41. The analysis shows that there are statistically significant differences between the three groups, with BAME providers experiencing the least impact, and white British providers experiencing the greatest impact.

Disability

9.42. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager (4% of the total) see an average reduction in income of 45%; and
- providers that do not feature either an ill or disabled manager (96%) see an average reduction in income of 52%

9.43. The analysis shows that there is a slightly greater impact on those providers that do not feature an ill or disabled manager, and that this difference is statistically significant.

National impacts, solicitor / NfP

9.44. Table 19 in Annex 1 shows the impact of removing Family Private matters (excluding domestic violence and child abduction) from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities.

Sex

9.45. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 53% for solicitors and 16% for NfPs;
- female owned and controlled providers see an average reduction in income of 48% for solicitors and 24% for NfPs; and
- providers with split ownership and control see an average reduction in income of 51% for solicitors and 0% for NfPs.

9.46. The analysis shows that, for solicitors, the differential impact seen is statistically significant. In relation to NfPs, differences are not statistically significant.

Race

9.47. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 53% for solicitors and 23% for NfPs;
- BAME owned and controlled providers see an average reduction in income of 36% for solicitors and 5% for NfPs; and

- split ownership and control providers see an average reduction in income of 47% for solicitors and 0% for NfPs.

9.48. The analysis shows that for solicitor providers differences are statistically significant, whereas for NfP providers the differential impacts are not statistically significant.

Disability

9.49. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 46% for solicitors and 5% for NfPs; and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 52% for solicitors and 20% for NfPs.

9.50. The analysis shows that for solicitor providers differences are statistically significant, whereas for NfP providers the differential impacts are not statistically significant.

London / non-London impacts

9.51. Table 20 in Annex 1 shows the impact of removing family private (excluding domestic violence and child abduction) from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities.

Sex

9.52. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 35% in London (51% of ownership) and 55% outside of London (68% of ownership);
- female owned and controlled providers see an average reduction in income of 29% in London (33% of ownership) and 54% outside of London (15% of ownership); and
- providers with split ownership and control see an average reduction in income of 29% in London (16% of ownership) and 54% outside of London (17% of ownership).

9.53. The analysis shows that male owned and controlled providers see a slightly greater impact than the other two groups, though both within and outside of London the differentials seen are not statistically significant.

Race

9.54. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 35% in London (55% of ownership) and 55% outside of London (95% of ownership);

- BAME owned and controlled providers see an average reduction in income of 31% in London (34% of ownership) and 43% outside of London (3% of ownership); and
- split owned and controlled providers see an average reduction in income of 36% in London (11% of ownership) and 51% outside of London (3% of ownership).

9.55. The analysis shows that white British owned and controlled providers see a slightly greater impact than their BAME counterparts. Differences are not statistically significant in London, and are significant outside of London.

Disability

9.56. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 34% in London (4% of ownership) and 46% outside of London (4% of ownership); and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 32% in London (96% of ownership) and 55% outside of London (96% of ownership).

9.57. The analysis shows that white British owned and controlled providers see a slightly greater impact than their BAME counterparts. Differences are not statistically significant in London, and are significant outside of London.

Conclusions on provider impacts

9.58. The main differentials, those between male and female owned and controlled providers, and between white British and BAME owned and controlled providers, are discussed above. This information implies that both groups seeing a greater impact are more likely to have conduct of cases in the family (private) category (and be more reliant on this income) than those who see a lower impact.

9.59. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 9.18.

Option 10 – Remove miscellaneous from scope

Description

- 10.1. Under this option, all matters funded under the miscellaneous category (with the exception of those exclusions in the consultation paper) would no longer be retained within the scope of legal aid. Legal aid is currently provided for Legal Help and Representation in a very wide range of other areas of civil law not included in the specific categories listed elsewhere.

Legal duties

- 10.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 10.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 10.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 10.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 10.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 10.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:
'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 10.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 10.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 10.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 10.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 10.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 10.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 10.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 10.15. In summary, our initial analysis of impacts on clients is as follows:

- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
- That having been said, it is estimated that female and BAME clients comprise a higher share of the present client base of civil legal aid recipients in this category than of the total population.
- The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.
- The analysis also suggests that male clients may see a greater effect when compared with the civil legal aid client base as a whole.

10.16. In summary, our initial analysis of impacts on providers is as follows:

- In terms of sex, male owned and controlled providers see a slightly greater impact than their female counterparts
- In terms of race, BAME owned and controlled providers see a greater impact than their white British counterparts

10.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

10.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic,

European and international legal obligations and have taken into account the following factors:

- the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
 - Moreover, insofar as the proposed changes may have a greater effect on female and BAME clients relative to the civil legal aid client base as a whole, this is an inevitable effect of the composition of the client base for civil legal aid in this category.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 10.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 10.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 10.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 10.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 10.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

10.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.

10.25. Table 2 in Annex 1 shows the impact of removing Miscellaneous from scope on clients. The analysis shows the following in relation to equalities.

Sex

10.26. Within the dataset there are a total of 3,551 claims in the miscellaneous category, comprised of both Legal Help and Representation matters. Of these, 55% were by female clients, 42% by male clients, with the sex of the remaining clients unknown.

10.27. The population is 51% female and 49% male. Women are therefore more likely to have a miscellaneous category case funded through legal aid when compared with the population as a whole.

10.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). The proportion of men and women in this category is therefore representative of civil legal aid clients as a whole.

Race

10.29. Of the 3,551 claims in the dataset, 68% were by white clients, 10% by BAME clients, and in 22% of cases the client's race was not recorded.

10.30. The population is 92% white and 8% BAME. Because of the relatively significant proportion of cases where the client's race was unrecorded, it is not possible to determine the extent of overrepresentation for BAME clients, though there is some present when compared to the population as a whole.

10.31. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not recorded. Again due to the significant proportion of clients for whom race information is either unknown or unrecorded it is not possible to determine the extent of potential overrepresentation as against the civil legal aid client base.

Disability

10.32. Of the 3,551 claims in the dataset, 13% were for clients with an illness or disability, and 52% for those without an illness or disability. In the remaining 35% of cases whether the client was ill or disabled was either unknown or unrecorded.

10.33. Of the total population of England and Wales 18% are disabled and 82% are not. Therefore, due to the large number of cases where it is not known if the client was ill or disabled comparisons cannot be made between clients in this category and the population as a whole.

10.34. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. The

significant rate of non-responses as to disability status means it is not possible to determine the extent of overrepresentation, were any to be present.

Conclusions on client impacts

- 10.35. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on female and BAME clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population. Analysis also suggests that male clients may also see a more significant impact when compared with the civil legal aid client base as a whole.
- 10.36. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether the mitigations identified serve to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 10.18.

B. Providers

National impacts

- 10.37. Table 21 in Annex 1 shows the impact of removing miscellaneous from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

- 10.38. Of the providers delivering Miscellaneous services that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (89% of the total) see an average reduction in income of 7%;
 - female owned and controlled providers (14%) see an average reduction in income of 3%; and
 - providers with split ownership and control (18%) see an average reduction in income of 6%.
- 10.39. The analysis shows that the impacts are within a narrow range, though differences are statistically significant between groups.

Race

- 10.40. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers (90% of the total) see an average reduction in income of 6%;
 - BAME owned and controlled providers (7%) see an average reduction in income of 15%; and

- split owned and controlled providers (3%) see an average reduction in income of 6%.

10.41. The analysis shows that whilst white British and split ownership groups see an equal impact, there is a greater statistically significant impact on BAME owned providers.

Disability

10.42. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager (4% of the total) see an average reduction in income of 3%;
- providers that do not feature either an ill or disabled manager (96%) see an average reduction in income of 7%.

10.43. The analysis shows that the impacts are within a narrow range, with no significant differential between groups.

National impacts, solicitor / NfP

10.44. No analysis has been conducted against this head because there are no NfP organisations within the LSRC-matched sample delivering Miscellaneous services. As such, solicitor results are identical to the national combined statistics presented above.

London / non-London impacts

10.45. Table 22 in Annex 1 shows the impact of removing Miscellaneous from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

10.46. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 26% in London (60% of ownership) and 5% outside of London (69% of ownership);
- female owned and controlled providers see an average reduction in income of 5% in London (23% of ownership) and 3% outside of London (12% of ownership); and
- providers with split ownership and control see an average reduction in income of 10% in London (17% of ownership) and 6% outside of London (18% of ownership).

10.47. Both within and outside of London, differences were statistically significant. .

Race

10.48. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 21% in London (61% of ownership) and 4% outside of London (95% of ownership);
- BAME owned and controlled providers see an average reduction in income of 18% in London (29% of ownership) and 11% outside of London (3% of ownership); and
- split race owned and controlled providers see an average reduction in income of 9% in London (10% of ownership) and 1% outside of London (2% of ownership).

10.49. The analysis shows that, both within and outside of London, impacts were not statistically significant.

Disability

10.50. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 0% in London (5% of ownership) and 4% outside of London (4% of ownership); and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 19% in London (95% of ownership) and 5% outside of London (96% of ownership).

10.51. The analysis shows that outside of London impacts are consistent between the two groups and not statistically significant, and that within London differences were statistically significant.

Conclusions on provider impacts

10.52. The main differentials, those between male and female owned and controlled providers and between BAME and white British owned and controlled providers, is discussed above. Although it is not immediately clear from the data why this effect is seen, it is in all likelihood attributable to those groups in the sample having conduct of a higher volume of cases under this category.

10.53. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 10.18.

Option 11 – Remove Tort and Public Interest matters from scope – Actions Against the Police (AAP) category

Description

- 11.1. Under this option, a ‘significant wider public interest’ would no longer be a solely determinative basis for bringing an excluded case back within the scope of the legal aid scheme.
- 11.2. Tort matters would also no longer be retained within the scope of legal aid. Because the civil legal aid scheme is very broad in scope, legal aid is currently available for a range of tort and other general claims (for example, assault, negligence, nuisance, breach of a statutory duty, false imprisonment and malicious prosecution). These will primarily be claims where damages are sought, although some may involve, for example, injunctions.

Legal duties

- 11.3. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 11.4. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 11.5. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people’s disabilities, even where that involves treating disabled people more favourably than other people.
- 11.6. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 11.7. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 11.8. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 11.9. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 11.10. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 11.11. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 11.12. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 11.13. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 11.14. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 11.15. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.

11.16. In summary, our initial analysis of impacts on clients is as follows:

- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be. Given the extremely small sample size in this analysis (101 cases), the validity of any conclusions drawn would be highly questionable.
- That having been said, it is estimated that male, BAME and disabled clients comprise a higher share of the present client base of civil legal aid recipients for these types of cases than of the total population.
- The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.

11.17. In summary, our initial analysis of impacts on clients is as follows:

- Impacts against all measures are extremely low, primarily due to the very small volumes of cases in the sample. This means that, where impacts are expressed as a percentage of all civil legal aid income, at the aggregated level impacts are no higher than 1% for any group.

11.18. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

11.19. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic,

European and international legal obligations and have taken into account the following factors:

- the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
 - Moreover, insofar as the proposed changes may have a greater effect on male, BAME and disabled clients relative to the population as a whole, this is an inevitable effect of the composition of the client base for civil legal aid in this category. However concerns regarding sample size and the potential validity of analysis are highly relevant under this option.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 11.20. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 11.21. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 11.22. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 11.23. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 11.24. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 11.25. It should be noted that, due to significant non-response rates as to race and disability client characteristics, as well as an extremely small sample size, conclusions in relation to client impacts in these areas should be treated with caution.**
- 11.26. Table 2 in Annex 1 shows the impact of removing Tort and Public Interest cases from scope in the AAP category on clients. The analysis shows the following in relation to equalities:

Sex

- 11.27. Within the dataset there are a total of 101 relevant claims relating to Tort and Public Interest matters in the AAP category, comprised of both Legal Help and Representation matters. Of these, 31% were for female clients, while 66% were for male clients, with 3% of unrecorded sex.
- 11.28. The population is 51% female and 49% male. Men are therefore more likely to have a Tort or public interest case in the AAP category funded through legal aid than women when compared to the population as a whole.
- 11.29. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Male clients are therefore over-represented within Tort and public interest cases in the AAP category when compared with civil legal aid client base as a whole.

Race

- 11.30. Of the 101 claims in the dataset, 52% were for white clients, 14% for BAME clients, and in 34% of cases race was either unknown or not recorded.
- 11.31. The population is 92% white and 8% BAME. White clients are therefore less likely to have Tort and Public Interest cases in the AAP category funded through legal aid.
- 11.32. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not recorded. As a result of the high percentage of cases in which race was either unknown or unrecorded under this option it is difficult to make legitimate comparisons here. It is unlikely that, in practice, both BAME and white clients would be underrepresented in this category as against all civil legal aid clients.

Disability

- 11.33. Of the 101 claims in the dataset, 21% related to those with either an illness or disability, with 32% relating to those without any illness or disability, whilst 48% were either unknown or unrecorded.
- 11.34. Of the total population of England and Wales 18% are disabled and 82% are not disabled. Therefore, disabled people are more likely to have Tort and Public Interest cases in the AAP category funded through legal aid than people when compared with the population as a whole.

11.35. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not recorded whether they are ill or disabled. The significant proportion of non-returns in relation to this category means that it is not possible to draw robust conclusions in comparison to the legal aid client base as a whole.

Conclusions on client impacts

11.36. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on ill or disabled and male clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population. However the concerns noted above in relation to sample size should be taken into account when considering impacts under this category.

11.37. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 11.18.

B. Providers

National impacts

11.38. Table 23 in Annex 1 shows the impact of removing Tort and Public Interest cases in the AAP category from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities:

Sex

11.39. Of the providers delivering Tort or Public Interest cases in the AAP category that could be matched to LSRC equalities data (approximately 40% of all providers):

- male owned and controlled providers (66% of the total) would experience an average reduction in income of 1%;
- female owned and controlled providers (14%) would experience an average reduction in income of 0%; and
- providers with split ownership and control (19%) would experience an average reduction in income of 0%

11.40. The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups.

Race

11.41. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers (89% of the total) see an average reduction in income of 1%;

- BAME owned and controlled providers (7%) see an average reduction in income of 1%; and
- split owned and controlled providers (4%) see an average reduction in income of 0%.

11.42. The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups.

Disability

11.43. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- provides featuring either an ill or disabled manager (3% of the total) see an average reduction in income of 0%; and
- providers that do not feature either an ill or disabled manager (97%) see an average reduction in income of 1%.

11.44. The analysis shows that there is little variation, with no statistically significant difference between impacts.

National impacts, solicitor / NfP

11.45. Table 23 in Annex 1 shows the impact of removing Tort and Public Interest cases in the AAP category from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities.

Sex

11.46. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 1% for solicitors, with no male owned NfP providers in the sample;
- female owned and controlled providers see an average reduction in income of 0% for solicitors and 0% for NfPs; and
- providers with split ownership and control see an average reduction in income of 0% for solicitors, with no split ownership NfP providers in the sample.

11.47. The analysis shows that for solicitors differences were not statistically significant.

Race

11.48. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 1% for solicitors and 0% for NfPs;
- BAME owned and controlled providers see an average reduction in income of 1% for solicitors and 0% for NfPs; and

- split ownership and control providers see an average reduction in income of 0% for solicitors, with no split ownership NfP providers in the sample.

11.49. The analysis shows that the impacts for both solicitors and NfPs do not feature statistically significant differences.

Disability

11.50. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 0% for solicitors and 0% for NfPs; and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 1% for solicitors and 0% for NfPs.

11.51. The analysis shows that the impacts for both solicitors and NfPs do not feature statistically significant differences.

London / non-London impacts

11.52. Table 24 in Annex 1 shows the impact of removing Tort and Public Interest cases in the AAP category from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

11.53. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 2% in London (51% of ownership) and 1% outside of London (68% of ownership);
- female owned and controlled providers see an average reduction in income of 1% in London (33% of ownership) and 0% outside of London (15% of ownership); and
- providers with split ownership and control see an average reduction in income of 0% in London (16% of ownership) and 0% outside of London (17% of ownership).

11.54. The analysis shows that, both within and between groups, the impacts are within a narrow range, with no statistically significant differential.

Race

11.55. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 2% in London (55% of ownership) and 0% outside of London (95% of ownership);
- BAME owned and controlled providers see an average reduction in income of 2% in London (34% of ownership) and 0% outside of London (3% of ownership); and

- split race owned and controlled providers see an average reduction in income of 1% in London (11% of ownership) and 0% outside of London (3% of ownership).

11.56. The analysis shows that, both within and between groups, the impacts are within a narrow range, with no statistically significant differential.

Disability

11.57. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 0% in London (4% of ownership) and 0% outside of London (4% of ownership); and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 1% in London (96% of ownership) and 0% outside of London (96% of ownership).

11.58. The analysis shows that the impacts are within a narrow range, with no statistically significant differential.

Conclusions on provider impacts

11.59. Given the extremely small sample size under this option, and the related low impacts, it is not possible to draw meaningful conclusions in relation to provider impacts, other than to say that financial impacts are negligible at the aggregate level.

11.60. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 11.18.

Option 12 – Remove Criminal Injuries Compensation Authority (CICA), Public Interest and Tort matters from scope - Personal Injury category

Description

- 12.1. Under this option, those bringing applications to the Criminal Injuries Compensation Authority (CICA) would no-longer be in scope of legal aid as the process is a relatively straightforward one for which legal expertise should not be required.
- 12.2. Tort matters would also no longer be retained within the scope of legal aid. Because the civil legal aid scheme is very broad in scope, legal aid is currently available for a range of tort and other general claims (for example, assault, negligence, nuisance, breach of a statutory duty, false imprisonment, and malicious prosecution). These will primarily be claims where damages are sought, although some may involve, for example, injunctions.
- 12.3. Nor would legal help for applicants to the CICA remain in scope. Legal advice is currently available to assist victims making applications for compensation.

Legal duties

- 12.4. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 12.5. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 12.6. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 12.7. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 12.8. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider

whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

12.9. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

12.10. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.

12.11. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.

12.12. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.

12.13. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

12.14. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

12.15. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the

case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.

12.16. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.

12.17. In summary, our initial analysis of impacts on clients is as follows:

- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
- That having been said, it is estimated that male and BAME clients comprise a higher share of the present client base of civil legal aid recipients in the relevant cases under this option than of the total population.
- The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.

12.18. In summary, our initial analysis of providers on clients is as follows:

- Due to the small sample size under this option (1,727 cases) no one group sees an impact greater than a 1% reduction in total civil legal aid income.

12.19. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

12.20. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.

- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on male and BAME clients relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 12.21. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 12.22. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 12.23. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 12.24. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 12.25. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 12.26. It should be noted that, due to significant non-response rates as to race and disability client characteristics, as well as an extremely small sample size, conclusions in relation to client impacts in these areas should be treated with caution.**
- 12.27. Table 2 in Annex 1 shows the impact of removing CICA, Tort or Public Interest cases in the Personal Injury category from scope on clients. The analysis shows the following in relation to equalities:

Sex

- 12.28. Within the dataset there are a total of 1,727 relevant claims relating to CICA, Tort and Public Interest cases in the Personal Injury category, all of which were Legal Help matters. Of these, 42% were for female clients, while 58% were for male clients.
- 12.29. The population is 51% female and 49% male. Men are therefore more likely to have a CICA, Tort or Public Interest case in the Personal Injury category case funded through legal aid than women when compared to the population as a whole.
- 12.30. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Female clients are therefore under-represented within the sample of cases when compared with civil legal aid clients as a whole; implicitly the opposite is true of male clients.

Race

- 12.31. Of the 1,727 claims in the dataset, 78% were by white clients, 12% by BAME clients and in 9% of cases race was not recorded.
- 12.32. The population is 92% white and 8% BAME. White clients are therefore less likely to have a relevant case funded through legal aid under this option when compared to the population as a whole.
- 12.33. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not known. The significant proportion of clients for whom race information is either unknown or unrecorded means it is not possible to make robust comparisons with the civil legal aid client base as a whole.

Disability

- 12.34. Of the 1,727 claims in the dataset, 11% related to those with either an illness or disability, with 62% relating to those without any illness or disability, whilst 27% were either unknown or unrecorded.
- 12.35. Of the total population of England and Wales 18% are disabled and 82% are not. Therefore, due to the high level of non response reliable comparisons cannot be drawn between clients with a CICA, Tort or Public Interest case in the Personal Injury category and the population as a whole.

12.36. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. Due to the high level of non-response conclusions cannot be drawn based on these figures.

Conclusions on client impacts

12.37. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on male and BAME clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population. However the concerns noted above in relation to sample size should be taken into account when considering impacts under this category.

12.38. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 12.18.

B. Providers

National impacts

12.39. Table 25 in Annex 1 shows the impact of CICA, Tort or Public Interest cases in the Personal Injury category from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities.

Sex

12.40. Of the providers delivering services in CICA, Tort or Public Interest cases in the Personal Injury category that could be matched to LSRC equalities data (approximately 40% of all providers):

- male owned and controlled providers (73% of the total) would experience an average reduction in income of 1%;
- female owned and controlled providers (12%) would experience an average reduction in income of 1%; and
- providers with split ownership and control (15%) would experience an average reduction in income of 0%

12.41. The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups. The very low impacts are seen as a consequence of assessing the financial impact of removing a very small number of cases (1,727) of particular types. The percentage reduction is calculated with reference to providers' total civil legal aid income, and as such very small numbers of cases being removed do not show any real impact on overall income.

Race

12.42. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers (95% of the total) see an average reduction in income of 1%;
- BAME owned and controlled providers (3%) see an average reduction in income of 0%; and
- split owned and controlled providers (2%) see an average reduction in income of 0%.

12.43. The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups. The very low impacts are seen as a consequence of assessing the financial impact of removing a very small number of cases (1,727) of particular types. The percentage reduction is calculated with reference to providers' total civil legal aid income, and as such very small numbers of cases being removed do not show any real impact on overall income.

Disability

12.44. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- provides featuring either an ill or disabled manager (5% of the total) see an average reduction in income of 1%; and
- providers that do not feature either an ill or disabled manager (95%) see an average reduction in income of 1%.

12.45. The analysis shows impacts are equal for the two groups.

National impacts, solicitor / NfP

12.46. Table 25 in Annex 1 shows the impact of removing CICA, Tort or Public Interest cases in the Personal Injury category from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities.

Sex

12.47. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 1% for solicitors and 0% for NfPs;
- female owned and controlled providers see an average reduction in income of 1% for solicitors, with no valid records for female owned NfPs
- providers with split ownership and control see an average reduction in income of 0% for solicitors, with no valid records for split ownership NfPs.

12.48. The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups.

Race

12.49. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 1% for solicitors and 0% for NfPs;
- BAME owned and controlled providers see an average reduction in income of 0% for solicitors with no valid records for BAME owned NfPs; and
- split ownership and control providers see an average reduction in income of 0% for solicitors with no valid records for split ownership NfPs.

12.50. The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups.

Disability

12.51. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 1% for solicitors with no valid records for NfPs; and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 1% for solicitors and 0% for NfPs.

The analysis shows that the impacts are within a narrow range, with no statistically significant differential between groups.

London / non-London impacts

12.52. Table 26 in Annex 1 shows the impact of CICA, Tort or Public Interest cases in the Personal Injury category from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities.

Sex

12.53. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 0% in London (51% of ownership) and 1% outside of London (68% of ownership);
- female owned and controlled providers see an average reduction in income of 1% in London (33% of ownership) and 1% outside of London (15% of ownership); and
- providers with split ownership and control see an average reduction in income of 1% in London (16% of ownership) and 0% outside of London (17% of ownership).

12.54. The analysis shows that, both within and between groups, the impacts are within a narrow range, with no statistically significant differential.

Race

12.55. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 0% in London (55% of ownership) and 1% outside of London (95% of ownership);

- BAME owned and controlled providers see an average reduction in income of 0% in London (34% of ownership) and 0% outside of London (3% of ownership); and
- split race owned and controlled providers see an average reduction in income of 1% in London (11% of ownership) and 0% outside of London (3% of ownership).

12.56. The analysis shows that, both within and between groups, the impacts are within a narrow range, with no statistically significant differential.

Disability

12.57. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 0% in London (4% of ownership) and 1% outside of London (4% of ownership); and
- providers that do not feature either an ill or disabled manager see an average reduction in income of 0% in London (96% of ownership) and 1% outside of London (96% of ownership).

12.58. The analysis shows that the impacts are within a narrow range, with no statistically significant differential.

Conclusions on provider impacts

12.59. Given the extremely small sample size under this option, and the related low impacts, it is not possible to draw meaningful conclusions in relation to provider impacts, other than to say that financial impacts are negligible at the aggregate level.

12.60. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 12.18.

Option 13 – Remove Public Interest matters from the scope of the Public Law category

Description

- 13.1. Under this option, a ‘significant wider public interest’ would no longer be a solely determinative basis for bringing an excluded case back within the scope of the legal aid scheme.

Legal duties

- 13.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 13.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 13.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people’s disabilities, even where that involves treating disabled people more favourably than other people.
- 13.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 13.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 13.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:
‘A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.’
- 13.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.

- 13.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 13.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 13.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 13.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 13.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 13.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 13.15. In summary, our initial analysis of impacts on clients is as follows:
- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be. In addition, the extremely small number of cases in the sample makes robust conclusions very difficult to draw.

- That having been said, it is estimated that male and BAME clients comprise a higher share of the present client base of civil legal aid recipients in the relevant cases under this option than of the total population.
- The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.

13.16. In summary, our initial analysis of impacts on providers is as follows:

- As a consequence of the extremely small number of cases affected (23 cases) providers do not see a measurable drop in income under this option.

13.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

13.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and

- the availability of alternative routes to resolution, including other sources of help and advice
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on male and BAME clients relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid. However it should be noted that the small number of cases affected (only 23 cases) make it difficult to draw any meaningful conclusions from the analysis.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 13.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 13.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 13.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 13.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 13.23. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

- 13.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution. In addition, the small number of cases affected in this category means that it is very difficult to draw meaningful conclusions from the analysis.**

13.25. Table 2 in Annex 1 shows the impact of removing public interest matters within the Public Law category from scope on clients. The analysis shows the following in relation to equalities.

Sex

13.26. Within the dataset there are a total of 23 relevant claims relating to Public Interest cases in the Public Law category, comprised of Legal Help and Legal Representation matters. Of these, 35% were for female clients, while 65% were for male clients.

13.27. The population is 51% female and 49% male. Women are therefore more likely to have a Public Interest matter in the Public Law category case funded through legal aid than men when compared to the population as a whole.

13.28. Of all civil legal aid clients, 57% are female and 43% are male (in 1% of cases the sex of the client is not known). Male clients are therefore over-represented within Public Interest matters within the Public Law category when compared with the civil legal aid client base as a whole.

Race

13.29. Of the 23 claims in the dataset, 39% were for white clients, 17% for BAME clients, and in 43% of cases race was either unknown or not recorded.

13.30. The population is 92% white and 8% BAME. Due to the significant proportion of clients for whom race is either unknown or unrecorded reliable conclusions cannot be drawn from these figures.

13.31. Of all civil legal aid clients, 64% are white, 26% are BAME, and the race of the remaining 11% is not known. Therefore, comparisons and analysis for these clients is problematic based on the high level of non-response, and reliable conclusions cannot be drawn.

Disability

13.32. Of the 23 claims in the dataset, 13% related to those with either an illness or disability, with 43% relating to those without any illness or disability, whilst 43% were either unknown or unrecorded.

13.33. Of the total population of England and Wales 18% are disabled and 82% are not. Therefore, due to the high level of non-response robust conclusions cannot be drawn from a comparison of public law clients and the population as a whole.

13.34. Of all civil legal aid clients, 21% are ill or disabled and 59% are not ill or disabled. For the remaining 20% of clients it is not known whether they are ill or disabled. Therefore, the significant proportion of clients for whom disability status is not known makes analysis and comparisons for these clients problematic and robust conclusions cannot be drawn.

Conclusions on client impacts

13.35. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on male clients, in that the proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population, and as

against the civil legal client base as a whole. However the concerns noted above in relation to sample size should be taken into account when considering impacts under this category.

- 13.36. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 13.18.

Provider impacts

- 13.37. As a consequence of the extremely small number of cases affected (23), all analysis shows a 0% impact on total civil legal aid income for providers. Therefore there is no further analysis in relation to provider impacts for this proposal.

Conclusions on provider impacts

- 13.38. Given the extremely small number of cases affected under this option, and the related low impacts, it is not possible to draw meaningful conclusions in relation to provider impacts, other than to say that financial impacts are negligible at the aggregate level.
- 13.39. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 13.18.

Option 14 – Implement options 1-13

Description

- 14.1. This option combines all of the proposals to change the scope of civil legal aid services, which are considered separately and individually in this EIA. We have undertaken this cumulative analysis to support an understanding of the potential impact if all of these proposals were to be implemented. The cumulative impact of all of the proposals in the consultation *Proposals for the Reform of Legal Aid in England and Wales* is also considered in a separate cumulative EIA.

Legal duties

- 14.2. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 14.3. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.
- 14.4. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 14.5. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 14.6. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 14.7. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:
'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 14.8. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 14.9. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 14.10. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 14.11. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 14.12. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

- 14.13. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.
- 14.14. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.
- 14.15. In summary, our initial analysis of impacts on clients is as follows:

- There are clients for whom our dataset does not have information about gender, race and / or disability (especially the last two), so there are limits to how robust our conclusions from the data can be.
- That having been said, it is estimated that women, BAME individuals and disabled people comprise a higher share of the present client base of civil legal aid recipients in the areas that are proposed to be removed from scope than of the total population.
- The proportion of clients affected by the proposed changes that fall within these groups is therefore likely to be high relative to their proportions in the population.

14.16. In summary, our initial analysis of impacts on providers is as follows:

- The analysis shows that there may be a particular impact on white British owned and controlled providers, who experience a higher reduction in income than any other group.

14.17. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

14.18. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;

- the litigant’s ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant’s capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism which should ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
 - Moreover, insofar as the proposed changes may have a greater effect on women, BAME individuals and disabled people relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid. Overall, women and BAME clients are no more overrepresented in these areas than in other areas in which we currently provide civil legal aid. Our data suggest that these groups are similarly overrepresented in the areas that we propose to keep within scope.

C. Promotion of equality of opportunity, good relations and positive attitudes

- 14.19. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 14.20. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people’s disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.
- 14.21. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 14.22. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 14.23.** But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

A. Clients

National impacts

- 14.24. It should be noted that, due to significant non-response rates as to race and disability client characteristics, conclusions in relation to client impacts in these areas should be treated with caution.**
- 14.25. Table 2 in Annex 1 shows the impact of removing all categories and sub-categories in options 1-13 from scope on clients. The analysis shows the following in relation to equalities.

Sex

- 14.26. Within the dataset of civil legal aid cases for 2008-09, there are a total of 613,318 claims which would be affected by the proposals (i.e. which are in areas that we propose to remove from the scope of civil legal aid), comprising Legal Help and Representation matters. Of these, 57% related to female clients, whilst 42% related to male clients.
- 14.27. The population is 51% female and 49% male. Women are, therefore, over-represented relative to the total population in the group of civil legal aid clients which would be affected by changes to scope.
- 14.28. The composition of the population of civil legal aid clients, however, is different. Of all civil legal aid clients, 57% are female and 43% male (with the sex of the client not known or not recorded in 1% of the cases). Therefore, the proportions of men and women affected by the proposals is in line with the proportions of all civil legal aid clients.
- 14.29. Of the 300,000 claims which would not be affected by the proposals (i.e. those in the areas which we propose to retain within scope), 59% of clients were female, 39% male and 2% sex unrecorded. Women were therefore over-represented among those not affected by the proposals when compared with all civil legal aid clients.
- 14.30. Based on this analysis, our initial conclusion is insofar as women are over-represented among the cases that would be removed from scope relative to the total population there is a potential disproportionate impact on clients based on their sex. However, when we compare the proportions of men and women in the areas which we propose to remove from scope to civil legal aid as a whole, and to the other areas which we propose to retain, women are not over-represented.
- 14.31. To put it differently, the overrepresentation of women among those affected by the proposal is a reflection of the composition of the civil legal aid client base.

Race

- 14.32. Of the 613,318 affected claims in the dataset, 63% relate to white clients and 27% to BAME clients (with 9% relating to cases where the client's race was either unknown or not recorded).

- 14.33. The population is 92% white and 8% BAME. BAME clients are therefore significantly overrepresented among the group of civil legal aid clients which would be affected by changes to scope relative to the total population.
- 14.34. The population of civil legal aid clients, by contrast, is 64% white and 26% BAME (with the race of the client either not known or not recorded in 11% of cases). Therefore, insofar as we can tell from the data, the white / BAME proportions among affected clients are broadly similar to those among the civil legal aid client base overall (however, this is only true of those on whom we hold data, and there are a significant proportion of clients for whom race information is not held).
- 14.35. Of those claims which would not be affected by the proposals (i.e. which would remain within scope), 56% related to white clients and 16% to BAME clients, with the client's race unknown or unrecorded in 31% of cases.
- 14.36. Therefore, as with the analysis by sex, our initial conclusion is that there is a potential disproportionate impact but that this is largely a reflection of the demographics of the user group for civil legal aid services. We should point out that the larger proportion of clients for whom the race information is not recorded makes our conclusions less robust for race than for sex.

Disability

- 14.37. Of the 613,318 affected claims in the dataset, 20% related to those with either an illness or disability, with 61% relating to those without any such illness or disability, and 18% either unknown or unrecorded.
- 14.38. Of the population of England and Wales, 18% are disabled and 82% are not. Therefore, disabled people are overrepresented among the civil legal aid client base compared to the population overall. However, depending on the composition of the unknown 18%, the extent of overrepresentation may be less than that of women and BAME individuals.
- 14.39. Turning to the civil legal aid client base, 21% of civil legal aid clients are ill or disabled and 59% are not. The disability status of the remaining 21% is unknown. Therefore, while the profile of clients for whom ethnicity data is recorded is similar, the considerable non-response rates mean it is difficult to infer from this conclusions for the client population in general.
- 14.40. Of those claims which would not be affected by the proposals (i.e. which would remain within scope), 9% related to ill or disabled clients, 49% to clients without an illness or disability and 42% to clients whose disability status was unknown or unrecorded.
- 14.41. It is obviously very difficult to draw any robust conclusions in view of the number of cases for which data as to clients' disability status are not recorded. Our initial conclusion, therefore, is that there is potentially a disproportionate impact relative to the population as a whole but, as with sex and race, if there is such a disproportionate impact then it may reflect the demographics of the user group for civil legal aid services.

Conclusions on client impacts

- 14.42. Our initial analysis of the impacts of the proposed changes on clients is that there is a potential disproportionate impact on women and BAME individuals, in that the

proportion of clients affected adversely by the proposed changes that fall within these groups is likely to be high relative to the proportion of people in those groups in the population. There is also overrepresentation of disabled people among those adversely affected relative to the population, although the high non-response rates mean it is difficult to infer from this conclusions for the client population in general.

- 14.43. It is estimated, based on our data, that this is primarily a reflection of the composition of the client base of civil legal aid recipients: women, BAME individuals and disabled people are overrepresented among recipients of publicly funded legal services. Therefore any reductions in the scope of civil legal aid will have a disproportionate effect on people in these groups.
- 14.44. It also appears that the potential differential impact is not a reflection of the areas that we propose to remove from the scope of civil legal aid. Indeed, a comparison of the proportion of affected and unaffected legal aid clients who are women suggests that women are, if anything, more heavily represented in the areas which we propose to retain within scope.
- 14.45. We have noted above that there are significant proportions of clients for whom race and / or disability status (particularly the latter) are either not known or not recorded. This affects the extent to which we are able to draw robust conclusions. As we explained above, there are limitations to the data, however, in spite of these limitations, client data reported through provider billing remains the most reliable data source for clients.
- 14.46. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the severity of the impacts identified is accurate, and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 14.18.

B. Providers

National impacts

- 14.47. Table 29 in Annex 1 shows the impact of removing all categories and sub-categories in options 1-13 from scope on providers at a national level. The percentages expressed reflect the net reduction in spending against total civil legal aid income. The analysis shows the following in relation to equalities.

Sex

- 14.48. Of the providers that could be matched to LSRC equalities data (approximately 40% of all providers):
- male owned and controlled providers (61% of the total) see an average reduction in income of 65%;
 - female owned and controlled providers (22%) see an average reduction in income of 70%; and
 - providers with split ownership and control (17%) see an average reduction in income of 68%.

14.49. Although the analysis above indicates that impacts here are slightly different, statistical tests show that this variation is not statistically significant.

Race

14.50. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers (86% of the total) see an average reduction in income of 68%;
- BAME owned and controlled providers (10%) see an average reduction in income of 56%; and
- split owned and controlled providers (4%) see an average reduction in income of 64%.

14.51. The analysis shows that there is a particular impact seen on white British ownership and control. The primary driver for this impact is the proposal to withdraw the majority of Family (private) funding, where providers with white British ownership and control make up 90% of the provider base. This, allied to the fact that this particular category is high volume and high value, leads to the net effect above. Tests show that the differential impact between white British and BAME owned and controlled providers were statistically significant, although the small sample size for split ownership and control means that they have not been included in these tests.

Disability

14.52. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager (5% of the total) see an average reduction in income of 68%; and
- providers that do not feature either an ill or disabled manager (95%) see an average reduction in income of 67%.

14.53. The analysis shows that the impacts are within a similar magnitude, with no statistically significant differential between groups.

National impacts, solicitor / NfP

14.54. Table 29 in Annex 1 shows the impact of removing all categories and sub-categories in options 1-13 from scope on providers at a national level, with the impact split between solicitor and NfP providers. The percentages expressed reflect the net reduction in spending against total civil legal aid income. At an aggregate level, the net position for solicitors and NfPs is as follows:

- In relation to NfP funding, all proposals would lead to a net reduction in income of 60%
- In relation to solicitor funding, all proposals would lead to a net reduction in income of 55%

14.55. The analysis shows the following in relation to equalities.

Sex

- 14.56. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- male owned and controlled providers see an average reduction in income of 64% for solicitors and 89% for NfPs;
 - female owned and controlled providers see an average reduction in income of 59% for solicitors and 93% for NfPs; and
 - providers with split ownership and control see an average reduction in income of 63% for solicitors and 94% for NfPs.
- 14.57. In respect of NfP bodies, the range of impacts is very narrow across the three groups with no statistically significant difference. The differential is slightly higher in relation to solicitors (6% across the groups), and is a statistically significant variation.

Race

- 14.58. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- white British owned and controlled providers see an average reduction in income of 64% for solicitors and 93% for NfPs;
 - BAME owned and controlled providers see an average reduction in income of 52% for solicitors and 85% for NfPs; and
 - split ownership and control providers see an average reduction in income of 59% for solicitors and 90% for NfPs.
- 14.59. The analysis shows that, in relation to solicitor provisions, the greatest impacts are seen on white British owned and controlled providers, experiencing a greater reduction in income than their BAME counterparts. As discussed above, this statistically significant difference is almost certainly attributable to the effect of removing family (private) from scope. In terms of NfPs, BAME and white British ownership impacts are broadly consistent, with less of an impact seen in split ownership. This is likely to be driven by the range of categories held by the providers in the sample serving to dilute effects. Again, the variation in impact among NfP providers was not statistically significant.

Disability

- 14.60. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:
- Providers featuring either an ill or disabled manager see an average reduction in income of 58% for solicitors and 90% for NfPs
 - Providers that do not feature either an ill or disabled manager see an average reduction in income of 63% for solicitors and 92% for NfPs
- 14.61. The analysis demonstrates that there is no statistically significant difference between NfP impacts. There is a slightly more significant impact between solicitor groups, although this remains relatively narrow.

London / non-London impacts

14.62. Table 30 in Annex 1 shows the impact of removing all categories and sub-categories in options 1-13 from scope on providers at the London against non-London level. Reductions are expressed as a percentage of overall civil legal aid income. The analysis shows the following in relation to equalities:

Sex

14.63. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- male owned and controlled providers see an average reduction in income of 56% in London (54% of ownership) and 67% outside of London (62% of ownership) ;
- female owned and controlled providers see an average reduction in income of 55% in London (29% of ownership) and 74% outside of London (21% of ownership); and
- providers with split ownership and control see an average reduction in income of 59% in London (17% of ownership) and 70% outside of London (17% of ownership).

14.64. The analysis shows that, both within and between genders both within and outside of London, the impacts are within a narrow range, with no statistically significant differential.

Race

14.65. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- white British owned and controlled providers see an average reduction in income of 56% in London (49% of ownership) and 69% outside of London (93% of ownership);
- BAME owned and controlled providers see an average reduction in income of 55% in London (42% of ownership) and 59% outside of London (4% of ownership); and
- split owned and controlled providers see an average reduction in income of 59% in London (9% of ownership) and 68% outside of London (3% of ownership).

14.66. The analysis shows that, within London, the impacts are within a narrow range, and that the difference was not statistically significant. Outside of London the differential impacts are significant, weighted to white British owned and controlled providers, with this effect likely to be caused by the proposals on family (private).

Disability

14.67. If these proposals were implemented, of those providers that could be matched to LSRC equalities data:

- providers featuring either an ill or disabled manager see an average reduction in income of 64% in London (5% of ownership) and 68% outside of London (5% of ownership); and

- providers that do not feature either an ill or disabled manager see an average reduction in income of 56% in London (95% of ownership) and 64% outside of London (95% of ownership).

14.68. The analysis shows that the impacts are within a narrow range, with no statistically significant differential.

Conclusions on provider impacts

14.69. The main differential, that between white British and BAME owned and controlled providers, are discussed above. This information implies that both groups seeing a greater impact are more likely to have conduct of cases in the family (private) category (and be more reliant on this income) than those who see a lower impact.

14.70. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 14.18.

Bar analysis

14.71. The analysis conducted on the Bar has a different methodology to that employed in the preceding analyses. This is primarily due to the availability of data in relation to the Bar. Whereas the LSRC equalities data can be used to identify specific equalities status within individual providers, the Bar information is only available at aggregate level i.e. for the whole group. This means that, whilst financial impacts on the bar by category can be identified, the equalities implications of those impacts cannot be determined. As such, Bar impacts are considered in the context of **option 14**, therefore the analysis shows the effect of removing all categories and sub categories in options 1-13 from scope. The following table shows the distribution of barrister deployment in the civil categories of law, with 56.7% of civil barristers conducting legal aid work.

Category of law	Civil barristers who receive public funding	% civil barristers receiving public funding
Consumer	47	2%
Family	795	30%
Debt	57	2%
Education	45	2%
Housing	348	13%
Actions Against Police	67	3%
Community Care	61	2%
Clinical Negligence	245	9%
Employment	48	2%
Mental Health	61	2%

Immigration / Asylum	133	5%
Personal Injury	189	7%
Welfare Benefits	39	1%
Public Law	265	10%

Bar financial impacts

- 14.72. Based on the cumulative effect of removing all options from scope, the changes imply a 67% reduction in funding for the civil Bar in the relevant categories, or £44m.
- 14.73. All impacts are shown as a percentage of civil fund take amongst barristers practising in the respective categories.

Category	Expenditure by affected categories			Barrister impact	
	2008-09	Impact (£)	Impact (%)	No. Barristers	Avg. impact
Actions Against Police	798,249	73,401	9%	183	2%
Public Law	1,993,556	16,167	1%	418	0%
Clinical Negligence	1,741,681	1,724,264	99%	306	50%
Consumer	1,829,604	1,829,604	100%	575	25%
Debt	603,649	255,785	42%	293	5%
Employment	197,599	43,788	22%	74	5%
Education	469,007	173,729	37%	72	7%
Housing	9,311,906	841,388	9%	1340	4%
Welfare Benefits	69,408	69,408	100%	22	7%
Family (Private)	45,960,747	35,915,676	78%	3934	32%
Miscellaneous	2,974,112	2,974,112	100%	982	17%
All	65,949,517	43,917,322	67%	6195	33%

Bar equalities analysis:

Legal duties

- 14.74. As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1976 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.
- 14.75. The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a

breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.

- 14.76. The statutory duties also require the MoJ to have due regard to the need to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
- 14.77. In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.
- 14.78. We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. Insofar as such potential impacts may arise, we consider whether they are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

- 14.79. Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

- 14.80. The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.
- 14.81. We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is 'no': these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.
- 14.82. We have also, consistent with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.
- 14.83. Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

- 14.84. Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

'(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

'(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -

- (a) A applies, or would apply, it to people with whom B does not share the characteristic,*
- (b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

14.85. The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.

14.86. Consistent with our duties to consider the impacts of our proposals, we set out below our initial analysis of the gender, race and disability impacts of the proposed changes in respect of barristers.

14.87. In summary, our initial analysis of impacts on barristers is as follows:

- It is not possible to determine specific impacts for barristers due to a shortage of data. However, insofar as female and BAME barristers are overrepresented in civil categories, and in relation to BAME barristers see a higher dependence on legal aid income, these proposals do have the potential for disproportionate impact.

14.88. In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which are about the scope of civil legal aid) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and
- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

14.89. In view of the above, we have considered whether the proposed changes are a proportionate means of achieving a legitimate aim. We believe that they are. Our reasons, to summarise, are as follows:

- The Government is committed to controlling public expenditure to reduce the deficit. In this context, it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available.
- In addition, the scope of legal aid has grown far beyond its original intention. We need to redress the balance between state and individual responsibility for resolving disputes and to focus our limited legal aid resources on those who most need help in accessing justice, in matters where legal advice or representation is really needed.
- In some cases (e.g. debt), we believe legal advice is not the most appropriate help for clients. In others (e.g. dividing marital assets and making child contact arrangements following divorce), we believe the courts, being an adversarial forum, are not generally best placed to provide good solutions.
- We have examined from first principles which issues should attract public funding. In reaching our proposals, we have been guided by our domestic, European and international legal obligations and have taken into account the following factors:
 - the importance of the issues at stake;
 - the litigant's ability to present his / her own case, taking account of the likely circumstances of the case, the hearing format and the litigant's capacity;
 - the availability of alternative sources of funding e.g. CFAs; and
 - the availability of alternative routes to resolution, including other sources of help and advice.
- There is nothing discriminatory about these factors. On the contrary, they are aimed at targeting legal aid resources on the most vulnerable and disadvantaged individuals. Consistent with these aims, we intend to retain an exceptional funding mechanism to ensure that funding is provided where some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is significant wider public interest in funding legal representation for inquest cases.
- Moreover, insofar as the proposed changes may have a greater effect on women, BAME individuals and disabled people relative to the total population, this is an inevitable effect of the composition of the client base for civil legal aid. Overall, women and BAME clients are no more overrepresented in these areas than in other areas in which we currently provide civil legal aid. Our data suggest that these groups are similarly overrepresented in the areas that we propose to keep within scope. (Our data on disability unfortunately have too large a proportion of clients for whom information is unknown or unrecorded to be able to draw any conclusions.)

C. Promotion of equality of opportunity, good relations and positive attitudes

- 14.90. We have given careful consideration to the need to promote equality of opportunity and good relations between people of different racial groups and the need to promote equality between men and women.
- 14.91. We have also considered the need to promote equality of opportunity between disabled people and other people, the need to take steps to take account of disabled people's disabilities, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.

- 14.92. We do not believe that the proposed changes should make the attainment of these objectives more difficult. The factors which we have taken into account in deciding which areas of civil and family law should attract public funding are intended to focus resources on those who most need help to obtain access to justice and on matters where legal advice or representation is really necessary.
- 14.93. In addition, the Government has specifically protected discrimination claims in all areas of civil legal aid, demonstrating its commitment to the principles of equality and to the combating of societal prejudices.
- 14.94. But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out above and in the final section.

Initial analysis of impacts

- 14.95. As stated above, data on equalities distributions within categories is not available, and as such any analysis that used aggregated equalities information, with that applied within individual categories, would not be valid. An additional complication is present in that there are no available data on barristers working across categories, and as such it is not possible to apportion impacts based upon time spent working within a particular category.
- 14.96. As a consequence, the only methodology available is to use the reductions in the ‘all’ option above and apply that reduction uniformly to the equalities information held at an aggregate level. This approach means that no specific impacts will be identifiable, as reductions will apply equally to the proportions within the sample groups. The table below shows the equalities characteristics of the Bar at a global level. For equalities purposes, a reduction in income of 28% is presumed across the board (based on the average reduction shown above).

Equalities characteristic	% of sample
Female	32.9
Male	67.1
White	87.4
BAME (including ‘other’)	12.6
Ill health / Disability	7.9
No ill health / Disability	92.1

- 14.97. As such, each group is presumed to see an average reduction in income of 28%, which does not demonstrate any differential impact. However, the data available in relation to the Family Bar (detailed below), tell us that female barristers generally, and also female BAME barristers, are significantly overrepresented in the Family category, and as such these proposals have the potential to disproportionately impact these groups.

The family Bar

- 14.98. Data on the family Bar are available from the Week-At-A-Glance Survey.⁷ This found that 60% of family barristers were female, and that female barristers have a higher dependency on legal aid income, with 65% of the female barristers surveyed seeing 50% or more of their income coming from legal aid as opposed to 52% of male barristers.
- 14.99. In particular female BAME barristers have a disproportionately high dependence on legal aid with 30% depending on legal aid for between 60% and 80% of their turnover and a further 22% for more than 80% of their income.
- 14.100. This feature of the Bar means that any proposal involving a change to legal aid fees for family work is likely to have a disproportionate impact on female barristers and on female BAME barristers, with this effect seen as a result of the composition of the family Bar rather than any inherent feature of the policy.

Conclusions on Bar impacts

- 14.101. Although methodological limitations mean that we cannot identify individual barrister impacts, other information sources indicate that, at least in relation to proposals concerning the scope of family private, there is the potential to have a disproportionate impact on female and BAME female barristers. This is a consequence of the constitution of the family Bar.
- 14.102. Respondents are invited to comment on whether the impacts identified in this EIA are accurate, whether the extent of the impacts identified is accurate and whether there are mitigations that can be identified to reduce or alter impacts. We have considered whether there are any steps that can be taken to mitigate the potential impacts discussed above, but have not identified any. To the extent that potential impacts are shown, it is our initial view that any sex, race or disability impact as a result of this proposal would be justified for the reasons given above at paragraph 14.89.

⁷ Debora Price, D. & Laybourne, A. (2009) *The Work of the Family Bar: Report of the Week-At-A-Glance Survey 2008*. Family Law Bar Association

Information Gaps

1. The primary gaps in data concern clients and the Bar. We propose to work closely with the Bar Council during the consultation period in an attempt to improve the comprehensiveness of the available data, and to develop methodologies that might allow analysis at levels other than the aggregate. Whilst the joint LSC / Bar Council data is valid, with a 35% response rate, the information relates to 2007-08 profiles and as such is dated, and is also subject to the limitations discussed above. Any more current data will be used to inform analysis during the consultation period and to support any full IA and EIA that would accompany any consultation response
2. To improve the Legal Aid evidence base, the Ministry of Justice intends to conduct a survey of legal aid clients to address the non-response issues in relation to client characteristics, improve the evidence in relation to capital and income, and seek a more developed understanding of potential behavioural responses to changes in legal aid provision.

Consultation Approach

3. The primary method employed for this consultation is the publication of the paper and a full public consultation over a 13 week period.
4. Where possible we will coordinate engagement with specific interest groups alongside other MoJ departments and Government departments more widely. We are conscious that the Government is in the process of broad structural reform and that there will be a range of issues across the programme that effect such groups. As such, it is incumbent on Government to ensure that engagement with these individuals and representative bodies is not unnecessarily onerous or inefficient in terms of their time, whilst still affording the opportunity to gain invaluable qualitative input into the proposals.

Next Steps

5. Comments from respondents are invited in relation to the accuracy and extent of the impacts identified in this draft EIA. All responses received will be vital to shaping the Government's decisions following consultation, and will inform the full EIA that will be published alongside any consultation response, currently scheduled for Spring 2011.

Annex 1 – Data section

Table 1: Scope proposals, client impacts, National – part 1

		Percentage of clients impacted						
		Clinical Negligence	Consumer	Non-priority debt	Employment	Education	Non-homelessness Housing	Welfare Benefits
Ethnicity	White British	67%	67%	84%	71%	53%	62%	70%
	BAME	11%	14%	13%	24%	31%	31%	27%
	Unknown	23%	19%	3%	5%	16%	7%	4%
Gender	Female	52%	49%	55%	45%	73%	60%	54%
	Male	47%	50%	44%	55%	27%	39%	46%
	Unknown	1%	1%	0%	0%	0%	1%	0%
Disability	Yes	30%	17%	30%	9%	16%	27%	63%
	No	29%	53%	62%	80%	62%	58%	29%
	Unknown	41%	30%	8%	11%	22%	15%	7%

Table 2: Scope proposals, client impacts, National – part 2

		Percentage of clients impacted						
		Non-detention immigration	Private Family	Miscellaneous	Actions against the police	Public law	Personal Injury	All categories
Ethnicity	White British	6%	77%	68%	52%	39%	78%	63%
	BAME	85%	11%	10%	14%	17%	12%	27%
	Unknown	9%	13%	22%	34%	43%	9%	9%
Gender	Female	39%	65%	55%	31%	35%	42%	57%
	Male	61%	34%	42%	66%	65%	58%	42%
	Unknown	1%	1%	2%	3%	0%	0%	0%
Disability	Yes	3%	7%	13%	21%	13%	11%	20%
	No	69%	72%	52%	32%	43%	62%	62%
	Unknown	28%	21%	35%	48%	43%	27%	18%

Table 3: Remove Clinical negligence from scope, Provider impacts

		Clinical Negligence	
		No of providers	Impact on fund take
Gender	Male	107	-30%
	Female	21	-33%
	Split	18	-30%
Disability	No	136	-30%
	Yes	11	-24%

Table 4: Remove Clinical negligence from scope, Provider impacts, London / non-London

		Clinical negligence			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Gender	Male	9	-3%	97	-33%
	Female	6	-19%	14	-37%
	Split	3	-2%	15	-35%

Table 5: Remove consumer from scope, provider impacts, national and by type of provider

		Consumer					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	384	-3%	10	0%	374	-3%
	BAME	34	-6%	6	-1%	28	-7%
	Split	11	-5%	1	0%	10	-5%
Gender	Male	300	-4%	9	0%	291	-4%
	Female	49	-4%	4	-1%	45	-4%
	Split	77	-3%	3	0%	74	-3%
Disability	No	408	-4%	12	0%	396	-4%
	Yes	22	-2%	5	-1%	17	-2%

Table 6: Remove consumer from scope, provider impacts, London / non-London

		Consumer			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	28	-6%	351	-3%
	BME	26	-8%	8	-1%
	Split	6	-4%	5	-6%
Gender	Male	31	-6%	265	-4%
	Female	11	-14%	38	-1%
	Split	17	-4%	59	-3%

Table 7: Remove non-priority debt from scope, provider impacts, national and by type of provider

		Non-priority debt					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	699	-9%	208	-25%	491	-2%
	BAME	52	-5%	16	-8%	36	-4%
	Split	22	-8%	9	-19%	13	%
Gender	Male	422	-4%	54	-20%	368	-2%
	Female	205	-17%	133	-25%	72	-3%
	Split	143	-9%	44	-27%	99	-1%
Disability	No	726	-8%	208	-25%	518	-2%
	Yes	51	-10%	26	-18%	25	-3%

Table 8: Remove non-priority debt from scope, provider impacts, London / non-London

		Non-priority debt			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	34	-7%	662	-9%
	BME	37	-5%	14	-5%
	Split	8	-6%	14	-9%
Gender	Male	40	-5%	380	-4%
	Female	25	-10%	179	-18%
	Split	15	-2%	127	-10%

Table 9: Remove employment from scope, provider impacts, national and by type of provider

		Employment					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	317	-4%	63	-11%	254	-2%
	BAME	25	-7%	9	-10%	16	-5%
	Split	4	-2%	2	-3%	2	-
Gender	Male	214	-4%	29	-17%	185	-2%
	Female	61	-5%	31	-7%	30	-3%
	Split	66	-2%	11	-8%	55	-1%
Disability	No	327	-4%	64	-11%	263	-2%
	Yes	22	-6%	11	-10%	11	-2%

Table 10: Remove employment from scope, provider impacts, London / London

		Employment			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	22	-6%	293	-4%
	BME	21	-8%	3	-2%
	Split	-	-	4	-2%
Gender	Male	20	-11%	193	-4%
	Female	9	-6%	51	-5%
	Split	12	-4%	53	-2%
Disability	No	38	-7%	286	-4%
	Yes	7	-9%	15	-4%

Table 11: Remove education from scope, provider impacts, national and by type of provider

		Education					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	100	-4%	10	-7%	90	-3%
	BAME	8	-3%	5	-1%	3	-7%
	Split	2	-11%	2	-11%		
Gender	Male	69	-3%	5	0%	64	-3%
	Female	21	-9%	8	-9%	13	-9%
	Split	19	-2%	2	-11%	17	-1%

Table 12: Remove education from scope, provider impacts, London / non-London

		Education			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Gender	Male	7	-4%	62	-2%
	Female	4	-7%	17	-10%
	Split	5	-6%	13	-1%

Table 13: Remove non-homelessness housing from scope, provider impacts, national and by type of provider

		Non-homelessness housing					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	797	-2%	130	-7%	667	-1%
	BAME	110	-5%	18	-9%	92	-4%
	Split	40	-5%	12	-10%	28	-3%
Gender	Male	562	-2%	42	-9%	520	-1%
	Female	199	-4%	81	-6%	118	-2%
	Split	184	-3%	34	-9%	150	-2%
Disability	No	894	-3%	137	-8%	757	-2%
	Yes	61	-4%	23	-7%	38	-2%

Table 14: Remove non-homelessness housing from scope, provider impacts, London / non-London

		Non-homelessness housing			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	86	-3%	706	-2%
	BME	80	-5%	29	-3%
	Split	20	-6%	20	-4%
Gender	Male	93	-4%	465	-2%
	Female	50	-4%	148	-4%
	Split	43	-6%	140	-3%
Disability	No	177	-4%	711	-2%
	Yes	14	-7%	47	-3%

Table 15: Remove welfare benefits from scope, provider impacts, national and by type of provider

		Welfare Benefits					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	468	-21%	214	-41%	254	-4%
	BAME	62	-22%	26	-39%	36	-9%
	Split	26	-16%	10	-32%	16	-6%
Gender	Male	248	-12%	62	-39%	186	-4%
	Female	188	-33%	135	-43%	53	-7%
	Split	118	-20%	50	-38%	68	-7%

Table 16: Remove welfare benefits from scope, provider impacts, London / non-London

		Welfare benefits			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	39	-23%	428	-21%
	BME	40	-19%	21	-27%
	Split	13	-16%	12	-18%
Gender	Male	42	-21%	205	-11%
	Female	29	-21%	158	-36%
	Split	21	-18%	96	-20%

Table 17: Remove non-detention immigration from scope, provider impacts, national and by type of provider

		Non-detention immigration					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	82	-14%	27	-17%	55	-13%
	BAME	104	-21%	22	-29%	82	-19%
	Split	11	-30%	3	-40%	8	-26%
Gender	Male	98	-19%	26	-24%	72	-18%
	Female	56	-19%	16	-21%	40	-18%
	Split	40	-19%	7	-32%	33	-16%

Table 18: Remove non-detention immigration from scope, provider impacts, London / non-London

		Non-detention immigration			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	27	-14%	55	-14%
	BaME	84	-19%	20	-29%
	Split	4	-22%	6	-35%
Gender	Male	54	-20%	43	-18%
	Female	32	-17%	24	-21%
	Split	25	-18%	15	-20%
Disability	No	108	-19%	72	-20%
	Yes	10	-8%	10	-14%

Table 19: Remove family private from scope, provider impacts, national and by type of provider

		Family private					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	1,625	-53%	6	-23%	1,619	-53%
	BAME	120	-35%	1	-5%	119	-36%
	Split	68	-46%	1	%	67	-47%
Gender	Male	1,199	-53%	3	-16%	1,196	-53%
	Female	306	-48%	4	-24%	302	-48%
	Split	303	-51%	1	%	302	-51%
Disability	No	1,752	-52%	7	-20%	1,745	-52%
	Yes	72	-45%	1	-5%	71	-46%

Table 20: Remove family private from scope, provider impacts, London vs non-London

		Family private			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	120	-33%	1,483	-55%
	BAME	73	-31%	45	-43%
	Split	22	-36%	46	-51%
Gender	Male	111	-35%	1,072	-55%
	Female	70	-29%	233	-54%
	Split	35	-29%	263	-54%
Disability	No	210	-32%	1,519	-55%
	Yes	7	-34%	64	-46%

Table 21: Remove miscellaneous from scope, provider impacts

		Miscellaneous	
		All	
		No of providers	Impact on fund take
Ethnicity	White British	656	-6%
	BAME	50	-15%
	Split	21	-6%
Gender	Male	493	-7%
	Female	100	-3%
	Split	133	-6%
Disability	No	697	-7%
	Yes	33	-3%

Table 22: Remove miscellaneous from scope, provider impacts, London / non-London

		Miscellaneous			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	67	-21%	582	-4%
	BAME	31	-18%	18	-11%
	Split	12	-9%	9	-1%
Gender	Male	67	-26%	420	-5%
	Female	24	-5%	75	-3%
	Split	20	-10%	112	-6%
Disability	No	106	-19%	583	-5%
	Yes	5	-0.3%	28	-4%

Table 23: Remove actions against the police (tort and public interest matters) from scope, provider impacts

		Actions against the police (tort and public interest matters)					
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	202	-1%	1	0.00%	201	-1%
	BAME	16	-1%	1	0.00%	15	-1%
	Split	10	-0.33%			10	-0.33%
Gender	Male	151	-1%			151	-1%
	Female	33	-0.25%	1	0.00%	32	-0.26%
	Split	43	-0.04%			43	%
Disability	No	221	-1%	1	%	220	-1%
	Yes	8	-0.03%	1	0.00%	7	-0.03%

Table 24: Remove actions against the police (tort and public interest matters) from scope, provider impacts, London / non-London

Actions against the police (tort and public interest matters)					
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	25	-2%	176	-0.5%
	BME	9	-2%	6	-0.5%
	Split	5	-1%	5	0.0%
Gender	Male	23	-2%	127	-1%
	Female	8	-1%	24	0.0%
	Split	7	-0.02%	36	0.0%
Disability	No	38	-2%	181	-0.5%
	Yes	1	0%	7	-0.03%

Table 25: Remove personal injury (CICA, public interest and tort matters) from scope, provider impacts

Personal injury (CICA, public interest and tort matters)							
		All		NfP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	276	-1%	1	-0.22%	275	-1%
	BAME	10	-0.12%			10	%
	Split	6	-0.18%			6	-0.18%
Gender	Male	214	-1%	1	-0.22%	213	-1%
	Female	36	-0.66%			36	-0.66%
	Split	45	-0.45%			45	%
Disability	No	280	-1%	1	-0.22%	279	-1%
	Yes	15	-1%			15	-1%

Table 26: Remove personal injury (CICA, public interest and tort matters) from scope, provider impacts, London / non-London

Personal injury (CICA, public interest and tort matters)					
London			Non-London		
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	17	-0.5%	256	-1%
	BME	4	-0.2%	6	-0.1%
	Split	1	-1%	5	0.0%
Gender	Male	14	0%	198	-1%
	Female	5	-1%	30	-1%
	Split	3	-1%	42	-0.4%
Disability	No	19	-0.5%	258	-1%
	Yes	3	-0.2%	12	-1%

Table 27: Remove all above categories from scope, provider impacts

All categories							
		All		NFP		Solicitor	
		No of providers	Impact on fund take	No of providers	Impact on fund take	No of providers	Impact on fund take
Ethnicity	White British	2,063	-57%	271	-61%	1,792	-56%
	BAME	244	-40%	32	-65%	212	-37%
	Split	91	-49%	15	-51%	76	-49%
Gender	Male	1,457	-55%	85	-59%	1,372	-55%
	Female	524	-53%	168	-62%	356	-49%
	Split	411	-54%	62	-60%	349	-53%
Disability	No	2,292	-55%	283	-60%	2,009	-54%
	Yes	125	-52%	37	-62%	88	-47%

Table 28: Remove all above categories from scope, provider impacts, London / non-London

		All categories			
		London		Non-London	
		No of providers	Mean impact on fund	No of providers	Mean impact on fund
Ethnicity	White British	185	-41%	1,855	-58%
	BME	159	-38%	83	-44%
	Split	36	-39%	54	-56%
Gender	Male	208	-41%	1,232	-58%
	Female	106	-39%	414	-57%
	Split	64	-38%	342	-57%
Disability	No	366	-40%	1,901	-58%
	Yes	20	-40%	104	-54%

Table 29: Scope proposals, sample size (number of providers with diversity information) and overall impact by option

	All providers		NfP		Solicitor	
	Number of providers	Mean impact on fund	Number of providers	Mean impact on fund	Number of providers	Mean impact on fund
Option 1 - Clinical Negligence	342	-42%			342	-42%
Option 2 - Consumer	818	-14%	27	-1%	791	-15%
Option 3 - Non-priority debt	1,175	-8%	298	-24%	877	-3%
Option 4 - Employment sub-categories	527	-5%	98	-11%	429	-3%
Option 5 - Education sub-categories	171	-5%	19	-5%	152	-5%
Option 6 - Non-homelessness housing	1,575	-3%	205	-8%	1,370	-2%
Option 7 - Welfare benefits	818	-20%	326	-40%	492	-7%
Option 8 - Non-detention immigration	306	-17%	75	-24%	231	-14%
Option 9 - Family private	4,037	-56%	11	-18%	4,026	-56%
Option 10 - Miscellaneous	1,357	-15%	16	%	1,340	-15%
Option 11 - Actions against the police	374	-1%	2	%	372	-1%
Option 12 - Personal injury	645	-1%	1	%	644	-1%
Option 13 - Public law	443	%	27	%	416	%
Option 14 - All above options combined	5,662	-55%	420	-60%	5,242	-54%