



Guidance on Carrying out Equality Impact Assessments

1.0. Introduction

These Guidance notes are intended to help you understand how to carry out Equality Impact Assessments.

This is a flexible process, and depending on whether you are impact assessing a policy, proposals, or an existing service or function, you may need to vary the steps outlined in this guidance.

Additional advice is available from the Head of Diversity and/or the Equality and Diversity Committee of the Society, including in relation to:

- Age
- Disability
- Gender
- Gender reassignment
- Marriage and Civil partnership
- Pregnancy and Maternity
- Race/ ethnicity equality/ discrimination
- Religion and belief
- Sexual orientation
- Social inclusion
- Processes and procedures in relation to equality/ discrimination
- Best practice in relation to equality/ discrimination

It should, however, be noted that the responsibility for the Equality Impact Assessment, and any supporting work such as research or involvement, resides with the project/department/function managers. The Head of Diversity and the Equality and Diversity Committee only provide an internal consultancy role.

These Guidance notes also refer to articles of the European Convention on Human Rights covered by the Human Rights Act 1998 which are potentially relevant when the impact assessing policies, proposals and projects. The relevance of human rights is considered only at the initial screening stage. If, at that stage, there are indications that articles of the Convention may be relevant, a referral should be made to the Head of Diversity.

1.1. What is an Equality Impact Assessment?

Equality Impact Assessments have been developed as a tool for ensuring that equality and diversity is effectively considered when drawing up policies or proposals which affect the delivery of services and the carrying out of the Society's functions. They will also be carried out across the Society's functions every three years in preparation for the publication of each new Equality Strategy of the Society.

At the simplest level impact assessments are about questions such as:

- Do we want everyone (all solicitors, stakeholders, and members of the public) to get the best possible service from the Law Society of Scotland?
- Do we think that 'one size fits all' amounts to good service?
- How can we make sure that some do not receive a poorer service than others because of the way we plan, design, and deliver our work?
- Do regulations, rules or guidance apply to everyone equally? Or could some have different impacts on different people or groups?

Carrying out Equality Impact Assessments should help us:

- Determine how the Society's policies and practice, or new proposals, will impact or affect different communities/groups (whether of solicitors or public service users), especially those groups or communities who experience inequality, discrimination, social exclusion or disadvantage
- Measure whether policies or proposals will have a negative or positive effect on different groups or communities
- Make decisions about current and future services and practice in fuller knowledge and understanding of the possible outcomes for different communities or customer groups
- Develop ways of monitoring and reviewing the effects of new or changing policies or proposals if they are introduced.

Example:

When developing the New Lawyers Engagement Strategy it was noted that there was a significant opportunity to promote various issues around equality and good relations, and that there was also a need to ensure advice and information was accessible to all.

Considering these issues at an early stage meant, for example, that the plans included projects such as creating online profiles of solicitors working in different areas of law, but also profiles of solicitors from diverse backgrounds (be that solicitors from minority ethnic groups or those with a disability). This allows the Society to promote a profession offering interesting and challenging careers irrespective of background. It also meant careful consideration could be given to how and where information is distributed, leading to us working with more partner organisations to ensure that everyone can access accurate and straightforward material on how to qualify as a solicitor in Scotland, regardless of the school they attend or whether they are presently working in another career. An example would include our 'Pathway to the Professions' social inclusion work with Edinburgh University.

NOTE: ALL examples (in the gray boxes) are only provided for training / guidance purposes, and may not represent the current policy position of the Society.

The **first stage** of the Equality Impact Assessment process is an Initial Screening Questionnaire. This screens proposed changes/projects to ascertain whether a full assessment is required.

The **second stage** is the full Equality Impact Assessment. This is a longer and more detailed exploration of the issues that may exist for projects that either have serious potential to create differential outcomes, or which are particularly high profile for the Society.

Equality Impact Assessment should only be completed by someone who has attended the Society's internal Equality and Diversity training and who is familiar with the legislative and policy equality framework. A concise summary of the law, and key definitions, can be found in chapters 3, 5, and 6 of the Equality and Diversity Strategy (http://www.lawscot.org.uk/diversity/equality_strategy.aspx).

1.2. Why do Equality Impact Assessments?

You are required to carry out equality impact assessments because:

- There is a legal requirement to do so which applies to certain named public bodies, and which the Society, although not formally covered, considers a relevant standard to meet
- The Council of the Society is committed to implementing a system of impact assessment across all the 'equality strands' and in relation to all our work
- They are helpful in identifying improvements to services and processes for all users
- They help avoid adopting harmful policies or procedures
- They help you to make better decisions
- They will help you to identify how you can make your services more accessible and appropriate
- They will help the Society to become a better employer and service provider.

Example:

When designing the new website the Society took into account from procurement stage the requirement that the website met the WAI 'AA' disability accessibility standard.

Ensuring accessible information is part of our legal duties. However, there were other benefits of the type listed above. The new 'cleaner' and 'less cluttered' website got positive feedback from all service users, with most people reporting it was easier to access information they were looking for. Building in accessibility from the design stage meant that there was no additional cost, whereas there could have been significant issues if the website had been designed without this in mind, and we had had to go back and do the work afterwards. It was also used to send a message to all staff and service users about the type of service we hoped to provide in the future – one that was as accessible as possible to all.

1.2. What does the law say?

The Equality Act 2010 protects people who share certain protected characteristics from discrimination as employees and consumers, by employers, by service providers and by bodies exercising public functions. Those protected characteristics are age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation.

The Equality Act 2010 introduced a single public sector equality duty requiring bodies carrying out public functions, such as the Society, to take steps towards advancing equality of opportunity and fostering good relations across the protected characteristics.

This guidance sets out the scope of protection and the conduct which is prohibited. It is accompanied by a checklist to assist you to identify unlawful discrimination. It is intended as a guide to facilitate the assessment of the equality impact on the protected groups of new and proposed policies, and also the redesign of existing policies.

Exceptions

What would otherwise be unlawful discrimination, will not be unlawful where one of the exceptions applies. The most important exception in the employment context is for occupational qualifications. This allows an employer to specify that a job applicant belongs to a particular protected group where it is an occupational requirement and it is reasonable and appropriate to apply that requirement having regard to the context and nature of the work.

In relation to the protected characteristic of age, direct age discrimination is potentially justifiable and there are a number of exceptions specific to the age protected characteristic.

In relation to services and public functions, there are exceptions, among other things in relation to parliament, legislation and judicial functions, in relation to health and safety, immigration insurance and single sex services.

If you are seeking to rely on an exception in relation to aspects of your policies and practices, you should consult the Head of Diversity.

Equality of Opportunity

In order to meet the requirements of the public sector duty, organisations carrying out public functions should have due regard to the need to:

- Remove or minimise disadvantages suffered by a protected group
- Take steps to meet the different needs of people in a protected group, including steps to take account of disabled persons' disabilities
- Encourage those sharing a protected characteristic to participate in public life or in any other activity in which their participation is disproportionately low.

Fostering good relations

In order to meet the requirements of the public sector duty, a public authority should take steps to foster good relations between groups, paying particular attention to the need to tackle prejudice and promote understanding between and among those in protected groups and others.

Positive action

In order to promote equality of opportunity or to foster good relations, it is permissible to take proportionate action which would otherwise be unlawful discrimination but which:

- Enables or encourages a protected group to overcome or minimise historic disadvantages
- Enables the different needs of a protected group to be met
- Enables or encourages participation by a protected group in an activity where participation of a particular protected is disproportionately low.

If you are considering positive action measures to promote equality of opportunity, you may wish to consult the Head of Diversity.

1.4. Who is responsible for Impact Assessment?

The manager responsible for each process, function, or policy within the Society (usually the department head) is responsible for ensuring the up-to-date and appropriate Impact Assessments have been carried out for all relevant work within their remit. Any costs or resource implications associated with impact assessment or involvement reside with the department responsible for the particular policy, process, or function.

Example:

The Admissions Committee is considering changing the criteria used in relation to the 'fit and proper' test (part of the application to become a solicitor, which includes, for example, the checking of previous criminal convictions and references). At the same time they are working with the member of staff who has been charged by their line manager with reviewing the reference forms used as part of the process of solicitors gaining recognition as an 'Accredited Specialist' in a particular field of law.

Everyone involved should be thinking of the potential equality and diversity issues. Committee Convenors should be ensuring these issues are discussed in relation to new policy and ongoing work, but so too should Committee Secretaries and the sponsoring department and department head. If the policy needs to go to another group for approval (such as Council or the President's Committee) they too should be ensuring these issues have been taken account of. In the future no new policy, process or function should be established, or an existing one amended, without an impact assessment. In this case (in the current organisational structure) the Director of Education and Training and the Director of Professional Practice would be responsible, but the Admission Secretary and the member of staff delegated to the specialist accreditation project also have a responsibility to raise the issue of impact assessment if they are not sure it is being considered.

If you are ever unclear as to what your responsibilities in relation to equality and a particular area or piece of work is, always ask the manager who allocated that work or check with the Head of Diversity.

1.5. Deciding what to impact assess

The Society has agreed a method for prioritising what should be assessed.

In preparation for the Equality and Diversity Strategy 2005-2008 all departments carried out a basic impact assessment across ALL functions: details of this process can be found in Section 6 of the Strategy. Another organisation-wide approach to impact assessment will be implemented in preparation for the 2008-2011 Equality Strategy.

All new projects, processes, procedures, and services, or the significant redesign of existing projects, processes, procedures and service must be assessed using the Equality Screening Template, and, where that initial screening questionnaire indicates it is necessary, the full Equality Impact Assessment.

These policies or functions might be internal (for example, in relation to staff or property) or external (for example, in relation to a service to the profession). The disability legislation (and some of the other equality legislation) specifically covers our role as a 'Qualifications Body' and 'Trade Organisation'. This means it is clear that when we talk about policy and process we are not just discussing services (such as the professional practice helpline or CPD) but also rules, guidance and standards (such as the competency requirements laid out for newly qualifying solicitors, or new rules in relation to 'letters of engagement').

Examples of what would require impact assessment:

- A new format of CPD being considered (for example, online learning)
- A floor of office accommodation being redeveloped
- A new travel and expenses policy
- New rules or guidance for the profession (taking into account equality issues for solicitors and clients)
- New HR policies
- Procurement of a new IT system to be used by the staff or the profession
- A communication plan for an area of work – ensuring all audiences have accessible information
- A new Code of Conduct or Business Practice Standard for law firms
- Changes to the requirements in relation to pre- or post- qualification training
- Changes to the approach to registration on the Roll of solicitors
- Regulatory requirements in relation to business structures or activities

If in doubt as to whether something needs assessed, you can ask the Head of Diversity for guidance.

1.6. The main steps in carrying out Equality Impact Assessments

The **first stage** of the Equality Impact Assessment process is an Initial Screening Questionnaire. This screens proposed changes/projects to ascertain whether a full assessment is required. **Many areas of work in the Society are unlikely ever to progress beyond and initial screening template.**

The **second stage**, *if required*, is a full impact assessment. Basically there are 8 main steps to take when carrying out a full Equality Impact Assessment:

1. Identifying the purpose and aims of the policy, service or function, or any proposals being made
2. Considering any information, data or research that is already available in relation to equalities and what this tells you
3. Making an assessment of the impact or effects on different communities or customer groups
4. Involving and consulting those affected for their views and ideas
5. Considering whether there is anything which could be done to mitigate against or to remove any adverse impact or effects, or to further promote equality, social inclusion or community cohesion
6. Making a decision as to whether or not to proceed
7. Where necessary, adding the main objectives from your impact assessment to your service plan, action plan, etc
8. Writing up your assessment and publishing it.

More detail on each stage is provided later in this document.

1.7. How wide should the impact assessment be?

You should aim to cover the following within your assessment:

Protected Groups

Age	People of the same age or within the same age range share the protected characteristic of age and are protected from discrimination by reason of their age.
Disability	People are protected where they have a physical or mental impairment which has a substantial long-term adverse effect on their ability to carry out normal day-to-activities
Gender	Both men and women, of any age, are protected from discrimination
Gender Reassignment	Those who have undergone, intend to undergo or are undergoing gender reassignment, whether this includes medical intervention or not, are protected from discrimination
Marital or Partnership Status	Discrimination because a person is married or in a civil partnership is unlawful (so not because of their marital status as such)
Pregnancy and Maternity	Pregnant women and those on maternity leave are protected from discrimination where they suffer unfavourable treatment
Race	Discrimination because of a person's colour, ethnic or national origins or nationality is unlawful
Religion & Belief	People are protected from discrimination because of their religion or because of their belief. For a belief to be protected, it must be a belief which is genuinely held and of central importance to them and worthy of respect in a democratic society
Sexual Orientation	People are protected from discrimination because they are gay or lesbian, bisexual or heterosexual.
Social Exclusion	Under the Scotland Act 1998 the definition of equality is expanded to include social exclusion, and it is therefore appropriate that these wider factors are considered even if they are outwith the current formal equality framework
Human Rights	Under the Human Rights Act, public bodies must ensure that they act in a way which is compatible with relevant European Convention rights

Policies, proposals, projects, services and functions

In particular you will need to capture policies, services and functions where there are:

- Proposals that will affect communities or groups of service users (members, public, clients)
- Proposals to remove, reduce or significantly alter a service
- Proposals to introduce or add to a service
- Significant proposals around funding or expenditure that have implications for communities or groups of service users
- New policies or changes to Society policies
- Important new or changing procedures that will affect service users (members, public, clients)
- Proposals to adopt policy priorities, strategies and action plans
- Proposals in relation to procured or commissioned services
- Important changes being proposed to staffing structures where groups of employees are likely to be affected

1.8. Recording your Equality Impact Assessment

You must make a record of your assessment; whether one or both stages are required. A form has been designed to help you: this can be downloaded from 'W:drive' – ***W:\DIVERSITY\Impact Assessment***

Remember – ultimately your assessment may require to be made public. Making a good record will help you when you need to produce your public version.

In reading the rest of this guidance it may help you to have copies of the two forms in front of you (the initial Screening Questionnaire, and the Full Equality Impact Assessment) so you can see exactly what is being referred to.

2.0. INITIAL SCREENING QUESTIONNAIRE

2.1. Identifying the purpose and aims of the policy, proposals, service or function being assessed

The aim of this screening template is to add structure to the equality planning of new projects and initiatives, or the redesign of existing policies, processes and procedures. It is intended to be a flexible tool, with those leading work completing only the sections relevant to the nature, scale and potential impact of what they are undertaking.

Right at the start of discussion about an area of new work it will be worth accessing the template and reviewing the key areas you will be later asked to report on. In your own work, or for a project team meeting, it may be useful to structure your agenda around the key headings, to ensure that everyone is thinking of the considerations which ensure projects take account of, and benefit from, considerations of equality and diversity.

Policies, procedures, and processes cover almost every aspect of the Society's work, and we are using a very wide definition of what new projects might be – it could range from a tender for a major piece of work (The Journal, outsourcing of IT functions such as the website, or major consultancy on an equality project), or could be the redesign of an existing process for which budget is already allocated (completion of trainee registration or practicing certificate renewal online, a way of providing CPD, or change to the way inspections are managed). It is important to realise that even a small project (for example, changing the way we administer criminal record 'Disclosures' in admitting trainees) could have a significant impact in relation to equality and diversity.

2.2. First draft of the Screening Template

When a full review of the Society's work is taking place you may be asked to discuss the draft with the Head of Diversity, a member of the Equality and Diversity Committee, or an external consultant providing assistance with impact assessment.

When planning new work you will be asked to complete a first written draft of the Initial Screening Questionnaire early on in the planning cycle. This should be discussed with your line manager and formally signed off.

It is suggested that you have a quick read through the whole paperwork before completing any individual section, as always in such templates there may, depending on the nature of the project, be overlap between sections and you will want to ensure that information is provided in the most appropriate boxes.

The form first asks some questions about the overall aim and objectives of the work, and for any relevant background information. Details are then asked of benefits and risks associated with the work for the Society, what key stakeholders are relevant, and what 'critical success factors' have been established (letting us know whether we have achieved our aims).

A very simple example would be:

1. AIMS AND OBJECTIVES

1.1 Overall aim and objectives	To allow online registration for CPD courses
1.2 Context and background	All registration is currently done through paper forms, which then require to be manually input by Society staff

2. STRATEGIC FIT

2.1 Strategic benefits	Reduction in admin burden for the Society, quicker option for profession, portrays more modern image of the Society, part of strategic goal to develop more IT solutions
2.2 Strategic risks	Some solicitors don't have good online access, a failure of the system to work could cause reputational damage
2.3 Business need	Reduction in admin burden/cost, more efficient process, potential to collect and monitor data more effectively
2.4 Membership benefit	Faster registration, auto-completion of standard fields once system has been used once, real-time feedback on whether course still has places. Such technology is 'expected' from many newer members, and others
2.5 Public and/or client benefit	Assists in altering public perception of the Society to viewing us as modern, business orientated organisation
2.6 Stakeholders	Where courses are being co-hosted need to identify our partner providers, and ensure data format is consistent with their systems/needs
2.7 Critical success factors	On budget, on-time delivery of robust new IT system. See 50% of registrations completed in this manner during first six-month period

Following on from this project specific information, you will be asked several questions on equality; these cover each key area specified in the three sets of 'public sector duties', although Society policy is that we use them to explore all strands (see section 1.6 above for a list of 'strands'). It should be noted the language and phrasing used in the questions is based on the wording of current equality legislation; for example, phrases such as 'eliminate unlawful discrimination' and 'more favourable treatment' comes directly from the legal duties we are trying to meet. It is important we use this wording, because otherwise it could be suggested that we have not followed the correct process or applied the correct standard or test. To try to make clear what it required we have provided a worked example below, and if you need clarification you can contact the Head of Diversity at any time for more information.

1. Is there any unlawful discrimination which should be eliminated?
2. Is it possible to eliminate or reduce the possibility of harassment or victimisation related to the protected characteristics?
3. In relation to disability, are there any reasonable adjustments which would be required where disabled people would otherwise be substantially disadvantaged?
4. Is there evidence (internal or external) to suggest that there may be different treatment of protected groups or differential outcomes for protected groups?
5. Will it be necessary to take steps to ensure the different needs of all groups are met, even where this involves different/more favourable treatments (as allowed by law)?
6. Is there a likelihood there will be concern in the profession, public, or stakeholder groups as to equality?
7. Is there an opportunity to remove or minimise disadvantages suffered by protected groups?



8. Is there an opportunity to positively promote equality for members of the protected groups?
9. Is there an opportunity to promote positive attitudes towards protected groups?
10. Is there an opportunity to positively promote equality between protected groups?
11. Is there an opportunity to promote greater participation of the protected groups?
12. Is there an opportunity to foster good relations between protected groups and those outwith those groups?

These should be scored at a '1' if it is believed there is a possible opportunity or effect, or '0' if there is not. If you need assistance, simply contact the Head of Diversity.

A very simple example would be:

In the initial screening template you are simply asked to indicate whether or not you think there could be an implication: here we give a narrative example of the thinking behind those choices in relation to our earlier example of 'online registration for CPD'. You would not be asked to provide this narrative on the screening questionnaire, although you should be able to justify the scoring.

1. Is there any unlawful discrimination which should be eliminated?

Issues: there may still be areas where unlawful discrimination is present, for example, a regulation that still has an age limit in it, because it has not been amended since the new age discrimination legislation came into place, or a practice rule that demands a 'written' contract, as opposed to one in 'permanent form'. It is a positive thing when issues such as these are identified, and one of the key purposes for doing impact assessment. Individuals should not be concerned about noting where such issues are identified, but should take care to ensure action is set to remedy the issue.

CPD Example: Providing registration in an alternative format will assist in meeting our duties in relation to accessible services, so this is likely to score a '1' in relation to disability.

2. Is there an opportunity to eliminate or reduce the possibility of harassment and / or victimisation based on the protected grounds?

Issues: Harassment is where an individual is subjected to unwanted conduct on a protected ground which has the purpose or effect of violating his or her dignity or of creating an intimidating, hostile, humiliating or offensive environment. Victimisation is where an individual who has sought to enforce their rights, or helped another to do so, is, as a result, treated less favourably than others who have not complained.

CPD Example: N/A

3. In relation to disability, are there any reasonable adjustments which would be required where disabled people would otherwise be substantially disadvantaged?

Issues: This might mean ensuring alternative options for disabled people which are not made available to others. These may be around physical access, the format of materials or events, timings and location, travel, etc.

CPD Example: You may allow telephone registration for those with an impairment that makes online registration more difficult, and may advertise that this option is available to those who require it.

4. Is there evidence (internal or external) to suggest that there may be different treatment of protected groups or differential outcomes for protected groups?

Issues: Evidence might come in a variety of formats. It could be the results of formal research (from questionnaires to interviews), it might be from our jurisdiction/profession or a similar one, it might be from internal data systems (such as the Roll database), or it might be from case-study feedback (for example, frequent cases cited in the press of discrimination in a particular area). Particular care should be taken not to be restrictive in what is considered as evidence: the test is perhaps anything that another organisation might cite to counter the position we might wish to put forward.



5. Will it be necessary to take steps to ensure the different needs of all groups are met, even where this involves different/more favourable treatments (as allowed by law)?

CPD Example: At the moment we know a lower percentage of female solicitors attend CPD events run by the Society than men.

Issues: This question may require additional input from the Head of Diversity. Whilst positive discrimination (for example, having a quota for the number of staff to come from minority ethnic groups) is illegal in the UK, in most cases the situation is complex in relation to disability and the duty is to make reasonable adjustments, where on occasion 'more favourable' treatment may be allowable or required. Positive Action (for example, specifically targeting and funding job adverts in press read by minority ethnic groups) may be possible and necessary in order to help achieve some of the Society's aims.

CPD Example: We need to ensure when commissioning the system that a variety of access options are built in, that plain English is used in the explanation of the system, and that alternative routes (registration by mail or phone) continue to be available for those who prefer this option.

6. Is there a likelihood there will be concern in the profession, public, or stakeholder groups as to equality?

Issues: This might be measured through topics we receive significant correspondence on, or that tend to spark debate at AGMs or faculty visits. It might also be measured through press coverage, and/or statements made by consumer and representative bodies.

CPD Example: This is not a high profile issue, and is unlikely to be of significant concern at the moment to these groups.

7. Is there an opportunity to remove or minimise disadvantages suffered by protected groups?

Issues: There may be positive opportunities to tackle historic imbalances or disadvantage. This might relate to the type of people previously using a service of the way that service is delivered.

CPD Example: Promoting the accessibility features of the new registration system may actually assist some people who found paper based registration more difficult.

8. Is there an opportunity to positively promote equality for members of the protected groups?

Issues: promoting equality might be through training, sharing of best practice and information, positive media and communication messages, encouraging integration, etc.

CPD Example: Writing to members to promote the new system and its accessibility features, and asking for feedback on experiences, will positively promote equality.

9. Is there an opportunity to promote positive attitudes towards protected groups?

Issues: like with promoting equality, promoting positive attitudes might be through training, sharing of best practice and information, positive media and communication messages, encouraging integration, etc. – the emphasis here is 'towards' members of a group, for example promoting positive attitudes towards people with disabilities by the population in general.

CPD Example: Displaying a logo indicating the system is accessibility compliant could help emphasise the profession's commitment to these constituent groups, and that they are an accepted and valued part of the profession.

10. Is there an opportunity to positively promote equality between protected groups?

Issues: promoting positive attitudes might be through training, sharing of best practice and information, positive media and communication messages, encouraging integration, etc. – the emphasis here is 'between' members of a group, for example building understanding between Muslim and Christian members.

CPD Example: N/A

11. Is there an opportunity to promote greater participation of the protected groups?

Issues: Greater participation could be about getting more people from protected groups involved in committees, working parties and Council or simply the general work and services of the Society. Particular consideration should be given to participation in areas where policy is being formed and or

12. Is there an opportunity to foster good relations between protected groups and those outwith those groups?

decisions taken.

CPD Example: Online registration provides 24 hour access irrespective of location (being at an office or not). This might make it a more useful option for those on flexible work patterns (especially if they are using it for immediate access to online learning) which links to gender equality.

Issues: This will be about promoting understanding between, for example, those of minority ethnic or sexual orientation and the wider community in any area/population. For example, the Society might bring together people from a range of community backgrounds around issues such as 'access to justice' to build understanding between groups.

CPD Example: N/A

As indicated above, on the real template each area should be scored at a '1' if it is believed there is a possible opportunity or effect, or '0' if there is not. If you need assistance, simply contact the Head of Diversity.

The total possible score is 93:

- If more than five rows score '6' or above the Head of Diversity should be contacted
- If more than five columns score '6' or above the Head of Diversity should be contacted
- If the total score is '45' or above then the Head of Diversity should be contacted

It should be noted that a high score or a low score does not necessarily mean there are 'problems', it simply means that the impact/potential impact is high.

Example:

A project to outsource the production of the Society and profession's magazine may achieve a very high score. This is NOT because the current / proposed arrangements may discriminate, cause barriers, or present threats but is because of the OPPORTUNITIES in relation to equality which the work presents.

For example, there is a tremendous opportunity to promote equality between members of groups covered by the law and towards members of protected groups (which might give you a combined score of 14 on the first two lines of the grid alone). Such a project might also score highly in relation to an opportunity to greater participation (by getting contributions and topics for debate from a diverse selection of writers), there could be some issues around access and alternative formats, and it might provide a platform to promote best practice that could reduce harassment and victimisation. All of this could easily take the score to a level where it is recommended the Head of Diversity is involved, but because of the numerous positive opportunities rather than any potential 'problems'.

2.3 A checklist for recognising unlawful discrimination

Identifying Direct Discrimination

- Are people who share the protected characteristic treated less favourably/differently?



- Are people who associate with others with a protected characteristic treated less favourably/differently?
- If yes, do any of the exceptions apply?
- Are people of the same age/age group treated less favourably/differently?
 - If yes, are there good, sound objective business reasons for the treatment?
- Is the more favourable treatment related to pregnancy and maternity
- Is the more favourable treatment related to disability
- Is there a genuine occupational requirement which requires the protected characteristic to be specified,
 - is it appropriate and necessary to restrict the post to people sharing that protected characteristic
- Is the more favourable treatment because of a decision to implement positive action measures
 - Is the more favourable treatment designed to implement positive action measures to address past discrimination and disadvantage or meet special needs or redress underrepresentation?

Identifying Indirect Discrimination

- Does the rule, practice or policy which you are considering apply equally to everyone?
- Considering each protected group in turn, does the rule policy or practice impact to particularly disadvantage that protected group when compared with others?
- Notwithstanding that adverse impact, is the rule necessary to meet a sound, objective business need?

Identifying Discrimination Arising From Disability

- Where you know that your employees/clients are disabled (or you would be reasonably expected to know)
- Are those disabled people treated unfavourably/differently because of something resulting/related to/arising from their disability?
- Even if they are, is there a good, sound business reason for the treatment which can be justified?

Duty To Make Reasonable Adjustments

- Where you know that your employees/job applicants/clients/customers are disabled (or you would be reasonably expected to know)
- And where they are at a substantial disadvantage as a result of a rule, policy or practice, as a result of a physical feature or by the failure to provide auxiliary aid
- Have you made all the adjustments which would be considered reasonable in the circumstances?

2.4 Involving Others

The Society must ensure a consistent and effective approach to its work: it is also an organisation with enormous internal expertise in different fields. Those people planning projects, or using the tool to review existing work, should, where appropriate, get the input from the relevant departments at the planning stage of the project. Other teams and individuals may well be aware of other research in the field, what other

jurisdictions have tried in the past, and specific implications of a project (such as IT) and so on. For example, if Records were considering an online registration for the practising certificate they may benefit from previous work in Update and IT to ensure that systems are equality compliant.

It should be noted that the Society is also under a legal duty in relation to the 'involvement' of people with disabilities in the development of its Disability Equality Scheme (which includes all Impact Assessments, which support the Scheme), ***and under similar duties in relation to Gender and Race*** (the technical requirement in these two areas is to 'consult', but the Society's commitment in its Equality Strategy is to meaningful 'involvement'). The Society is further committed to 'involvement' across the other strands of equality (see section 1.6), where possible, as part of its commitment that the 'highest standard' from each strand be used in all our work. The response in the questionnaire must indicate how these duties will be dispensed.

Depending on the nature of the project (for example, if the equality issues are particularly complex) you may wish to have external input even at this early stage. If so, then contact the Head of Diversity to discuss this. Ensuring their input early on should lead to more effective, and cost effective, planning and implementation.

Finally, with some projects this may be an appropriate stage to canvas the views of certain other external stakeholders. For example, a planned project to alter the content of the Diploma in Legal Practice is unlikely to be a success without buy-in from the Diploma providers.

A very simple example of involvement would be:

Discussing with disabled service users what systems/features are best in terms of ensuring website accessibility, and whether there is a 'standard' or 'badge' in terms of accessible websites that they think is particularly meaningful.

Involving service users at the testing stage to ensure accessibility.

If you are unsure as to what requires to be done in relation to 'involvement', please contact the Head of Diversity to discuss what arrangements may be appropriate.

2.5 Human Rights

The Human Rights Act places a duty on public authorities to act compatibly with relevant European Convention rights, and to respect, protect and fulfil everyone's human rights. The Equality Impact Assessment process provides an appropriate framework to consider the articles of the Convention and to make an initial determination of the relevance of those rights to the policy, proposal or project being undertaken at the initial screening stage.

Some Convention rights (listed below) are absolute but most are limited or qualified, which means that rights can be restricted in fulfilment of a legitimate aim, such as the rights and freedoms of others, so long as the restriction is required by the law and is appropriate and necessary in the circumstances.

In the event of one or more of the Convention rights being identified as relevant, in order to ensure a proportionate response, a referral should be made to the Head of Diversity who will determine whether a full human rights impact assessment is necessary.

Article 2: the right to life: There is a positive duty on the state to protect life, which includes protection against risk to life, including suicides and duty to prevent deaths in custody

Article 3: the right not to be tortured or suffer inhumane or degrading treatment: There is a positive duty to protect from inhuman treatment and this article seeks to ensure promotion and protection of vulnerable groups and ensure no abuse or neglect of those in care/custody or the disproportionate use of force

Article 4: right not to be subject to slavery or forced labour: the work must be performed involuntarily; and the requirement to do the work must be unjust or oppressive or the work itself involve avoidable hardship.

Article 5: the right to liberty and security of persons, subject to limited exceptions, setting out minimum rights for those deprived of liberty including information about reason for detention; trial within a reasonable time or release pending trial; Judicial determination of lawfulness of detention Compensation; relevant to immigration detention, sectioning, informal detention in relation to mental health as well as imprisonment.

Article 6: the right to a fair trial: must be a fair and public hearing before an independent and impartial tribunal within a reasonable time; right to representation; disclosure and a reasoned judgment. Applies to both civil and criminal determination of rights

Article 8: the right to respect for private and family life, home and correspondence: qualified right but with a wide scope protecting dignity and autonomy requiring participation in decision making (e.g. decisions about treatment or care, consent to medical treatment, support for decision making etc) ;Privacy (e.g. personal privacy at home or in care home, use of personal information etc); Family life (e.g. separation from spouse in residential care, social isolation) Physical and psychological integrity (e.g. poor quality care or inadequate service provision not amounting to inhuman treatment).

Article 9: the right to freedom of thought, conscience and religion: the right to hold beliefs is absolute although the right to manifest beliefs is limited. Protects wide range of religious and non-religious beliefs so long as sincerely held and worthy of respect

Article 10: the right to freedom of expression: qualified right which can be restricted where it impacts on the rights and freedoms of others

Article 11: the right to freedom of assembly and association: this covers the right to form trade unions and to engage in peaceful protest. It is a qualified right which can be restricted if it meets the appropriate tests

Article 14: non-discrimination: ensures the other articles of the Convention are implemented without discrimination and supplements protection under Equality Act

Article 1, Protocol 1- right to property: right to peaceful enjoyment of property’; any deprivation of possessions limited; states are entitled to control the use of property in accordance with the general interest,

Article 2, Protocol 1: right to education: access to existing education services and need of "effective" education, relevance to recognition of and provision for special education needs and alternative education when excluded.

2.6 Here are some relevant examples where Convention rights would be relevant to the work of the Society

Article 4 Prohibition of forced labour	The Society is considering a proposal to make pro bono work mandatory for solicitors, after some members suggested this as a way to raise the profile of such work and to demonstrate the profession’s commitment to the wider community. Account must be taken of Article 4 when considering whether or make this mandatory
Article 6 Right to a fair trial	A new accreditation is developed for those provide advice in a police station interview situation. Part of the test includes reassessment of whether the individual is “fit and proper” when working in a role potentially working with vulnerable adults. The process is designed with a right of appeal to a separate panel to ensure compliance with Article 6
Article 8 Right to private and family life; Article 9 right to freedom of religion	The Society requires that members must behave in a way which shows personal integrity and are fit to carry out the duties of a solicitor. In drafting new guidance on how this will be assessed the Society needs to take account of Article 9 where certain acts and stated views may relate to the religion of the individual and Article 8 where matters may concerns their domestic arrangements or entirely personal activity taking place in private Article 8 may also be relevant in situations such around any rules or guidance the Law Society may issue on submitting to searches as prisons.
Article 10 Freedom of expression	After a number of criticism made by lawyers of judicial decisions made on the steps of the court to the media at the end of a hearing, the Lord President requests that solicitors are reminded of their duties to act with respect to the courts under the Society’s Standard of Conduct. In framing such advice, the Society must take into account the Article 10 right to freedom of expression
Article 11 the right to freedom of assembly and association	Recent ‘strikes’ by criminal lawyers might lead to the suggestion of some guidance on strike action by solicitors. However, care would need to be taken that it did not impinge on a right of freedom of assembly.

2.7 The Final Screening Template

Having finalised your own thinking, and sought the input from others as appropriate, a final draft of the screening template should be approved at an appropriate level (this will vary from line management through to the Council of the Society). Once you have a final completed template it should be placed in ‘W:drive’ – **W: DIVERSITY Impact Assessment**. It is important that we all learn from the project planning happening elsewhere: if projects are initially confidential the plan should be kept on a private drive, but on completion of the project should be transferred to the folder above.

2.8 Completed Example Form

A completed example form, in Adobe Acrobat Format, can be downloaded from 'W:drive' – **W:DIVERSITYImpact Assessment** This may assist you in developing impact assessments in your own area.

2.9 Making a decision

Having 'scored' the various questions and provided other information the initial screening questionnaire takes the user through how to assess whether a full equality impact assessment is required, or whether the process can simply be signed off by the appropriate manager or committee at this stage.

3.0. THE FULL EQUALITY IMPACT ASSESSMENT

Not all proposals will need to go to a full impact assessment, but for those that do there is a second form to complete and more detailed information to compile. Completing the requirements will involve some time commitment, but we'd ask you to remember that this is a legal duty and to remember examples like the one in relation to our website (section 1.2) where all service users benefited from proper equality planning.

3.1. Step 1 – Identifying the purpose and aims of the policy, proposals, service or function being assessed

- Before starting the assessment it is important that time is spent in determining the purpose and the aims of the policy, service or function, or proposals. This should include consideration of any specific objectives and how these will guide the operation of the policy, service or function, or implementation of proposals.
- ***This should have been completed as part of Section 1, 2 and 3 of the Equality Screening Questionnaire – this MUST be submitted alongside the Equality Impact Assessment as this avoids information having to be duplicated on two forms***

3.2. Step 2 – Considering any information, data or research that is available in relation to the policy, proposals, service or function and what this tells you

This is the point at which you bring together all of the relevant equalities and service user information or data which already exists in relation to the operation of the policy, about the service and how the function operates, or in relation to the proposals, in order to help you to make your assessment.

This will include examining existing monitoring information, service-user feedback, consultation and involvement work. Ideally, you will have a range of quantitative and qualitative information available to you.

You will be able to identify gaps in the information you have and you may need to make a decision about whether you should get that information now in order to complete your assessment, or whether you should do this as a further action for inclusion in your action plan (the likely product of your assessment).

If time and resources permit, or this is an especially significant project, you may wish to commission the collection of new data or check out whether any comparative data exists which could be used to inform your assessment.

In many cases, the information you will have will be incomplete, especially in relation to areas such as religion or belief and sexual orientation. Assumptions may have to be made, but these assumptions should be tested against what data is available, perhaps in relation to similar services in other organisations, or checked with relevant equality groups. These assumptions can also be tested later in the process, against relevant service user groups or consultation feedback.

At this stage you may discover more about how useful your current monitoring activity is – so be prepared to identify needed changes to what you monitor and how you go about monitoring in the future. Again these can form items for your action plan.

Any new or unexpected findings should be checked with those affected, if this is possible.

You might find it helpful to prioritise your findings and data – so that the data which tells you the most useful things is kept near at hand.

Example:

If we look at the work of the Client Relations Office we might have various sources of data:

- We know that The Law Society of England and Wales has detailed research around race, gender and disability in relation to who makes complaints, and who is complained against. Our complaints system and population profiles are not the same as E&W, but there may be things we can learn
- We have taken legal advice on a variety of specific cases: what has this told us of how we manage the process?
- The Ombudsman has commented on areas such as this: what has this told us of how we manage the process?
- We know from the files that a high number of complainers have mental health issues
- Can we look at research in relation to other similar complaints systems? Or comparator systems (such as the Scottish Public Services Ombudsman)?
- We have research, although from some time ago, as to the expectations of complainers in relation to our complaints system.

All of this evidence may give us useful insight into the issues around equality and the complaints process.

In some cases the department head, or Head of Diversity, may be able to direct you to relevant research. You may also wish to consider whether any specific research should be commissioned before further work is undertaken.

3.3. Step 3 – Making an assessment of the impact or effects on different communities, customer and employee groups

Using the information which has been gathered is the next step – to assess whether there is likely to be differential impact, whether direct or indirect, upon relevant groups or communities, as well as further exploring any human rights issues identified in the screening template (see guidance above on this).

A differential impact is where a policy, proposal, service or function has different, often less beneficial outcomes for one (or more) service-user or employee group when compared to another.

Or, it could mean that a universal approach to the delivery of a service or function means that some people are unable to access the service, for example, because it is only provided in evenings after work, making it harder for people with child care responsibilities to attend.

Another example might be where a service is culturally inappropriate or where it fails to acknowledge the different needs people have. For example, a new dress code requirement for front-of-house staff could have a variety of implications.

Example:

The 'New Partners' course is only delivered a few times a year, in the central belt, and always on a Friday and Saturday. This could have implications for:

- Those with weekend child care or carer responsibilities
- Those in remoter geographic locations
- Those for whom Saturday (and Friday evenings) are a day of religious significance
- Attendance is mandatory for new partners, yet some may have extensive experience in areas covered and some none, and there is no assessment of learning. It may be hard to objectively justify an 'attendance' rather than 'competence' standard in relation to equality legislation.

In making your assessment you will need to consider whether any differential or adverse impact amounts to unlawful discrimination. If you find this, then you are duty bound to act to try and ensure that the Society acts lawfully – by changing the policy or procedures in question.

If it is not unlawful, but there is evidence that groups are treated less favourably, you will need to consider whether;

- The policy, proposal, service or function is intended to address the specific needs of a particular group or community and it is necessary to promote equality of opportunity for this group over others; or
- If this is not the case, are there alternative measures that could be taken to help other people to benefit too?

The following questions might help you:

- Does the data/ information point to, or highlight, any differential impact, and if so for whom?
- If there is a differential impact, does it amount to unlawful discrimination, whether direct or indirect?
- Is it trying to provide for the needs of a group which is already experiencing discrimination or disadvantage?
- If the results are that one (or more) group appears to benefit less, is there justification for this?
- Is there anything which could be done to remove adverse or unfair treatment?
- Could access be improved for any groups or communities, and if so how?

- Do you need to firstly understand more about the needs of groups and how these might be met?
- Could anything else be done to help tackle social exclusion?
- Could anything else be done to improve relations between or within communities to promote cohesion?

3.4. Step 4 – Involving those affected for their views and ideas

Consultation and Involvement are key parts of the process. It can take place at different points along the way, depending on the need for information and feedback.

It is worth emphasising again that the Society is also under a legal duty in relation to the ‘involvement’ of people with disabilities in the development of its Disability Equality Scheme (which includes all Impact Assessments, which support the Scheme), *and under similar duties in relation to Gender and Race* (the technical requirement in these two areas is to ‘consult’, but the Society’s commitment in its Equality Strategy is to meaningful ‘involvement’). The Society is further committed to ‘involvement’ across the other strands of equality (see Section 1.6), where possible, as part of its commitment that the ‘highest standard’ from each strand be used in all our work. The response in the questionnaire must indicate how these duties will be dispensed.

As a minimum, the following will be needed:

- Some customer or community feedback/ consultation on the existing arrangements so they can be assessed
- Feedback on the alternatives or proposals to test them out before they are adopted
- Feedback as part of future monitoring and review
- Active engagement covering the public sector duties (gender, race and disability) and the other equality strands

Helpful guidance on carrying out involvement and consultation projects is referenced in Section 6.2 of the Equality and Diversity Strategy 2005-2008. The Society’s ‘Service Accessibility Review’ (available from <http://www.lawscot.org.uk/diversity/research.aspx>) has helpful information from this previous process covering many of the Society’s functions.

A another simple example of involvement would be:

The competency standards for ‘Professional Education and Training – Stage 1’ (part of the route to qualification) are being altered. Many of these relate to areas such as communication with clients and colleagues, and court advocacy skills.

The Education and Training team work with people with a range of communication impairments to make sure that the standards are phrased in such a way that they ensure solicitors are appropriately qualified but do not discriminate against those with communication impairments.

If you are unsure as to what requires to be done in relation to 'involvement' please contact the Head of Diversity to discuss what arrangements may be appropriate.

3.5. Step 5 – Consider whether there are measures which might mitigate any adverse impact or other ways of achieving the same policy goals

Considering whether there are ways of mitigating adverse impact and alternative ways of achieving the same goals is an important part of the assessment.

Mitigating an adverse impact can either mean lessening the impact or providing some other remedy if it is not possible to reduce it.

Coming up with alternative ways for delivering the service where the impact will not be as adverse is also important. For example, you may need to develop different delivery strategies for different groups to ensure that the service you are delivering is appropriate and accessible to them all.

Altering your proposals is another option, to change them so that they meet the needs of others not initially identified when the proposals were first being drawn up.

The following should be considered:

- What are the options?
- How does each option affect different groups or communities?
- Will the alternatives help promote equality of opportunity, improved treatment and access?
- If one option is adopted what are the implications?
- How will people know about the new way(s) of delivery so that they can benefit?
- What are the costs associated with each option and how can they be resourced?
- Does the Society have any statutory obligations which would be breached if any of the options were chosen and implemented?

3.6. Step 6 – Making a decision to proceed

It may seem odd to flag as a separate stage the need to make a decision to proceed or not, as the organisation has already committed time and resources into the project/development so far, and has presumably done so because it believes this work is required. However, it is worth noting that if adverse impacts are identified which would breach the Society's legal requirements in relation to equality, and no way of managing or mitigating these impacts can be found, the project cannot proceed. In reality, this is rare: usually a properly managed project/development of the nature the Society is likely to be involved in can be managed in such a way that equality requirements are met.

This stage in the process simply involves the relevant manager / committee signing off that the project can proceed.

3.7. Step 7 – Action planning

The whole point of carrying out equality impact assessments is to identify better ways of delivering services so that all groups and service-users can benefit from them as they need to.

Having made your assessment of what needs to be changed, or what could be improved, the next step is to identify the action which needs to be taken.

In order to ensure that agreed actions are taken forward, you are required to produce an action plan as part of your assessment, and the actions from this plan need to be added to your service area/departmental plan, so that they can be tracked and mainstreamed.

A simple example of an action plan would be:

Issues/ adverse impact identified	Proposed action/ objectives to deal with adverse impact	Targets/Measure	Timeframe	Responsibility	Indicate whether agreed
We identified that the appointments system for committees was not considered to be transparent, and that there was no way of assessing equality issues built in	New system: - Open advertisement of all roles in national press/legal journals - role descriptions created - structured application forms - structured interviews	Policy and paperwork developed and checked	Oct 06	DC + Head Div	Agreed
		Compliance checking – eg. the posts are advertised, paperwork for individual processes exists	Annual	DC + Head Div	Agreed - approved at President's Committee

In drawing up your actions you should attempt to ensure that they are “SMART”. This means setting objectives against which you can measure over time to see if the changes you want to happen are taking place.

Depending on whether you are assessing a new or changing policy, existing procedures, how a service or function will be delivered, or a set of proposals, you will need to reach a decision on an Action Plan, and this decision may need to be agreed by the President's Committee, the Senior Management Team, and/or the Council of the Society.

3.8. Step 9– Writing up your assessment and publishing it

A form has been designed for you to use to record your assessment as you carry it out: this can be downloaded from 'W:drive' – **W:\Guides & Information\Diversity**.

Once the assessment has been completed and the actions agreed, you should complete the writing up of your assessment and store it in 'W:drive' – **W:\Guides & Information\Diversity**.

Remember, these Impact Assessment may be viewed by an enforcement body (such as the Equality and Human Rights Commission) or by members of the profession or public, so they must be completed to an appropriate standard.

3.9. Following through

And finally, it is vital that you follow through with your action plan, and that you report at regular intervals in the manner agreed. This may include updating the Head of Diversity on progress, in particular for the annual report on equality developed each November.