



Law Society
of Scotland

Consultation Response

Equality Evidence Strategy 2023 to 2025: Consultation

7 October 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Equalities Law and Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: *Equality evidence strategy 2023 to 2025*¹. The sub-committees have the following comments to put forward for consideration.

General Comments

We have the following general comments to make:

1. We consider that data collection in this area should be aligned with the terms used in equalities legislation (for example the protected characteristics listed in the Equality Act 2010). By using common terms across all research will help to ensure that the data gathered in one policy area can be referenced across other policy areas.
2. We acknowledge the importance of the investment in analytical capacity to support improvements to equality data and evidence, and welcome the creation of a new Equality and Justice Research team

¹ [Equality evidence strategy 2023 to 2025: consultation paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/equality-evidence-strategy-2023-to-2025/consultation-papers/pages/1)

Chapter 1: The Consultation Questions

This response is confined to 2 questions: question 2 and question 5. Other than the general comments stated above, as have no comments to make in relation to the other questions.

Question 2.1

To what extent do you think that the proposed actions would adequately deliver on our ambition for a robust and wide-ranging equality evidence base?

- Fully
- Partially
- Not at all
- Don't know

Question 2.2

Please set out your reasons for your answer:

We note our concern that a siloed approach to the collection of equalities data, as reported in the consultation (e.g. p13 'Recent (justice) initiatives have been focused on race and sex'), fails to address the issue of intersectionality. Measuring the impact of Intersectionality of two or more protected characteristics can demonstrate that there are different or more severe impacts than there are if the impact of each characteristic is measured individually. Whilst it is noted that for certain actions the impact of intersectionality will be measured, we suggest that this should be measured across all actions.

Question 5.1

Are there any additional improvement actions that you think should be considered that are achievable within the 2023-25 time period?

- Yes
- No
- Don't know

Question 5.2

[For respondents who answered ‘Yes’ to Question 5.1]

Please tell us what additional improvement actions we should consider, and the reasons why these actions are important. For example, the groups who would benefit, or what information needs these actions would address:

In November 2020, we raised concerns regarding whether appropriate legal processes had been followed in hospital discharges to care homes during the early stages of the coronavirus pandemic.² Whilst data existed in relation to the number of patients discharged, their main diagnosis, and their capacity to consent to testing for COVID-19, we were not aware of data relating to capacity to consent to transfer from hospital to care home, or data relating to any legal processes used to effect a transfer on a lawful basis, consistent with patients’ fundamental rights. We called for Scottish Government to release this data, however we understand that such data is not collected centrally and as such we were unable to ascertain the scale of the issue.³ We recommend that such data should be routinely gathered and collated in order to better safeguard the fundamental rights of vulnerable individuals. We also note that the final report of the Scottish Mental Health Law Review (SMHLR) made a number of recommendations relating to data within the scope of the Review, including that “The Scottish Government should promote the Equality Act and UNCRPD duties to collect data on protected characteristics and should ensure this data is disaggregated in a way which evidences the inequalities experienced by geographically and culturally distinct groups.”⁴ The SMHLR has also recommended that “There should be a duty on Public Health Scotland to actively lead work with the Mental Welfare Commission, groups representing people with lived experience, other agencies holding data and the research community to determine what needs to be monitored across mental health services to ensure human rights obligations are being met.”⁵

² [Evidence required to show lockdown hospital discharges were lawful | Law Society of Scotland \(lawsociety.org.uk\)](https://www.lawsociety.org.uk/evidence-required-to-show-lockdown-hospital-discharges-were-lawful)

³ A subsequent report by the Mental Welfare Commission requested data from each Health and Social Care Partnership: [Moves from hospitals to care homes during the pandemic – new report finds wider concerns over adherence to the law | Mental Welfare Commission for Scotland \(mwccscot.org.uk\)](https://www.mwccscot.org.uk/moves-from-hospitals-to-care-homes-during-the-pandemic-new-report-finds-wider-concerns-over-adherence-to-the-law)

⁴ Scottish Mental Health Law Review Final Report (September 2022), recommendation 1.8 (page 63). Available at: <https://cms.mentalhealthlawreview.scot/wp-content/uploads/2022/09/SMHLR-FINAL-Report-.pdf>

⁵ Ibid, recommendation 11.7 (p519)



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