BAR STANDARDS BOARD

REGULATING BARRISTERS

SUPPORTING INFORMATION

BSB Handbook Equality Rules

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Introduction

About this supporting information

This information pack is designed to be a tool for the administration of chambers, to enable chambers to meet their legal and regulatory duties, and to follow best practice in equality and diversity.

This document is structured so that each section includes links to other sections of the Handbook, or to external websites, or to documents available on other parts of the Bar Council and Bar Standards Board (BSB) websites.

Key reasons for chambers to adopt equality and diversity principles

3. There are three key reasons underpinning the adoption of equality and diversity principles in chambers: fairness, compliance, and commercial advantage.

Fairness

4. It is fundamental to a democratic society governed by the rule of law that there should be access to justice. The Bar has a special position in the legal system of England and Wales, and confidence in the legal system will be enhanced if the arrangements made for access to the Bar's services, and for access to practice at the Bar for aspiring barristers are seen to be fair and non-discriminatory, and to be open to all, regardless of social, economic or educational background or circumstances. This will lead, in time, to a more diverse Bar, which better reflects the diversity of society in England and Wales.

Compliance

Discrimination on grounds of race, sex, disability, pregnancy and maternity, sexual orientation, marital or civil partnership, gender re-assignment, religion or belief, or age, is unlawful and also constitutes professional misconduct. This Information provides an evidential standard against which allegations of discrimination may be judged.

Commercial advantage

6. If the Bar is to thrive, it needs to select the very best aspiring barristers, which means selecting from the widest possible pool. Discrimination in the provision of services by the Bar also reduces demand for those services.

The structure of the Guidelines

7. These Guidelines consist of 14 sections, as follows:

Section 1 – Basic Principles

8. This section explains the key legal obligations on chambers and individual barristers. It also includes guidance on how to meet these requirements in chambers.

9. The legal obligations are those flowing from the current legal framework.

Section 2 – Fundamental Equality Principle

10. This section sets out the core non-discrimination equality principle of the Handbook which relates to the employed and self-employed Bar.

Sections 3 to 12 – Key Topics

11. Sections 3 to 12 relate to key topics to which chambers need to pay particular attention. They provide more detail on legal and regulatory requirements and how equality issues should be approached in practice in a chambers setting.

12. For each topic, the Guidelines set out the relevant legal and regulatory requirements. This is followed by guidance on best practice. The guidance includes further explanation about the legal and regulatory requirements, but is not part of the legal or regulatory framework. You are, however, strongly encouraged to follow it: doing so should help you to ensure that you meet your legal and regulatory duties.

13. The key topics are:

Section 3 – Equality policy and action plan
Section 4 – Equality and diversity officer

Section 5 – Recruitment in chambers
Section 6 – Equality monitoring
Section 7 – Workforce diversity data collection and publication
Section 8 – Fair access to work
Section 9 – Harassment and bullying
Section 10 – Parental leave
Section 11 – Flexible and part-time working and career breaks
Section 12 – Providing services to disabled people

Section 13 – Model Policies and Documents

14. This section contains model harassment, parental leave, reasonable adjustments and diversity data policies chambers may wish to use in meeting their Handbook obligations. It also contains a sample equality action plan. Each of the documents may be adapted to meet the individual requirements of chambers.

Section 14 – Directory

15. Section 14 is a directory of organisations and information resources that can provide chambers with further information and support on equality and diversity.

Examples

16. Examples of good practice and case studies to illustrate particular points, are given throughout the text and are clearly identified within boxes. These are intended to be illustrations of the application of the general principles to specific factual situations, and should not themselves be regarded as setting out rules or general principles. Chambers may adopt these examples to suit their own Chambers needs.

SECTION 1

Basic Principles

Introduction

1. This section sets out the basic legal requirements under equality legislation. The equality legislation referred to is the Equality Act 2010.

Legal requirements

Protected grounds

2. The law[1] prohibits discrimination on the following grounds (referred to in the legislation as 'the protected characteristics'):

- race (including colour, nationality and ethnic or national origins)
- sex
- pregnancy and maternity
- disability[2]
- sexual orientation
- marriage and civil partnership
- religion or belief
- age
- gender reassignment

3. The main types of prohibited conduct are:

- direct discrimination (including combined discrimination)
- discrimination arising from disability
- indirect discrimination
- failure to make reasonable adjustments
- harassment
- victimisation

Areas in which discrimination is prohibited

4. Discrimination is prohibited in two main areas:

- employment
- service delivery (characteristics of age and marriage/civil partnership are excluded)

Provisions specific to the Bar

5. There are specific provisions in equality legislation[3] covering barristers and clerks, in relation to:

- the arrangements A makes for deciding to whom to offer a pupillage or tenancy
- the terms on which A offers B a pupillage or tenancy
- the terms on which B is a pupil or tenant
- the way in which a pupil or a tenant is afforded access to opportunities for training or gaining experience or for receiving any other benefit, facility or service
- termination of pupillage or tenancy
- harassment of pupils or tenants
- victimisation of pupils or tenants
- discrimination against barristers including victimisation and harassment

Further information on the legal requirements

6. This section explains the protected grounds, the main types of prohibited discrimination and the main provisions relating to employment and service delivery.

The section also explains slight variations in the types and area of prohibited discrimination for different protected grounds.

Protected characteristics

8. Race: includes nationality, colour and ethnic or national origins.

9. Sex: protects both men and women from discrimination on grounds of sex.

10. Marriage and civil partnership: covers anyone who is married or who is a civil partner.

11. Pregnancy and maternity: this covers anyone who is pregnant or taking a period of maternity leave to look after a child.

12. Disability: a person has a disability if s/he has a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day to day activities.

- Disability includes not only physical disability

1. Equality Act 2010. www.legislation.gov.uk/ukpga/2010/15/contents
2. S6 (1) (a) & (b) Equality Act 2010: a person has a disability if s/he has a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day to day activities.
3. Equality Act 2010. www.legislation.gov.uk/ukpga/2010/15/section/47

but also mental impairments such as bi-polar disorder.

- It covers severe disfigurement[4], progressive conditions[5] and recurring impairments.[6] Specific rules are made in respect of conditions such as cancer, HIV and multiple sclerosis which are deemed impairments for the purposes of the Act.[7]
- There is also a positive duty to make 'reasonable adjustments' to prevent a provision, criterion or practice, or physical feature of premises, placing the disabled person at a substantial disadvantage.[8] Reasonable adjustments are dealt with in detail in Section 11.

13. Religion or belief: includes any religious or 'philosophical belief' such as humanism or pacifism, and encompasses discrimination based on the lack of religion or belief.[9]

14. Sexual orientation: covers sexual orientation towards:

    - persons of the same sex
    - persons of the opposite sex or
    - persons of the same sex and of the opposite sex.[10]

    Sexual orientation does not cover gender reassignment which is a separately protected characteristic see below.

15. Gender re-assignment: covers anyone who is undergoing, proposing to undergo or has undergone a process (or part of a process) of reassigning their sex. Gender reassignment covers anyone who is undergoing, proposing to undergo or has undergone a process (or part of a process) of reassigning their sex. The Equality and Human Rights Commission states, to be protected from gender reassignment discrimination, you do not need to have undergone any specific treatment or surgery to change from your birth sex to your preferred gender. This is because changing your physiological or other gender attributes is a personal process rather than a medical one. For further information please click on following link: https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-discrimination. Trans is an umbrella term for people whose identity differs from the sex they were assigned at birth, however some people who have transitioned do not consider trans to part of their identity.

16. Age: covers particular ages and also age ranges.[11] It does not cover under 18's in service delivery. However, the Handbook prohibits all discrimination on all grounds, so although certain types of age discrimination against under 18s in service delivery are not currently unlawful, generally age discrimination in service delivery is prohibited by the Handbook.

Types of discrimination – main categories

17. The main categories of unlawful discrimination are:

Direct discrimination

18. A person directly discriminates against another if because of a protected characteristic s/he treats that person less favourably than s/he treats or would treat others.[12]

19. With the exception of certain types of age discrimination, direct discrimination cannot be justified.

20. It is unlawful to discriminate based on false perception. For example, a person can be unlawfully discriminated against if the discrimination is based on the incorrect assumption that he is gay.

Discrimination arising from disability

21. A person discriminates against a disabled person if s/he treats that person unfavourably because of something arising in consequence of that person's disability and it cannot be shown that such treatment is a proportionate means of achieving a legitimate aim.[13]

Indirect discrimination

22. Indirect discrimination occurs where an apparently neutral provision, criterion or practice has, or would have, a disadvantageous impact upon a particular group compared with others. The provision, criterion or practice can be justified if it is a proportionate means of achieving a legitimate aim. For example, it could be indirect discrimination if all chambers' social events took place in the evening which could affect pupils and

4. S.3 Sch.1 Pt 1. Equality Act 2010
5. S.8 Sch.1 Pt 1 Equality Act 2010
6. S.2(2) Sch.1 Pt 1 Equality Act 2010
7. S. 6 (1) Schedule 1 Part 1 Equality Act 2010
8. S. 20 Equality Act 2010
9. S.10 Equality Act 2010
10. S.12 Equality Act 2010
11. S.5 Equality Act 2010
12. S.13 Equality Act 2010
13. S.15 Equality Act 2010

tenants with primary childcare commitments.

Duty to make adjustments

23. Where a provision, criterion, physical feature or practice puts a disabled person at a substantial disadvantage in comparison with non-disabled people, the law places a duty on individual barristers to take such steps as are reasonable to avoid the disadvantage.[14]

24. This duty also covers the requirement to provide auxiliary aids for disabled people where reasonable.

Harassment

25. Harassment is any form of unwanted conduct in relation to a relevant protected characteristic which has the effect or purpose of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.[15]

26. A single incident may constitute harassment if it is sufficiently serious.

27. The motive or intention of the perpetrator may be (but is not invariably) relevant. Harassment is unlawful under equality legislation and can also constitute a criminal offence.

Victimisation

28. A person victimises another person if s/he subjects that person to a detriment because s/he believes that person has done or is about to do a protected act such as:

- giving evidence in proceedings relating to an act or acts of discrimination
- bringing proceedings relating to an act or acts of discrimination
- making an allegation of discrimination
- doing any other thing for the purposes of equality legislation or in connection with it

Other relevant concepts

Positive action

29. Where a person reasonably believes that persons with a shared protected characteristic suffer a disadvantage, have particular needs or

are disproportionately under-represented, that person may take any step to encourage or enable that group to overcome or minimise the disadvantage.[16]

30. Positive action may be taken to improve under-representation of particular groups in pupillage and tenancy as well as any employed position in chambers.

31. Such action may include providing encouragement to disadvantaged groups to apply for a particular type of work, and/or training to help fit them for that work.

32. Positive action may also consist of providing those from groups under-represented in chambers with additional training and encouragement to apply for positions.

Example

Redbrick chambers conducts a diversity monitoring exercise during which it is discovered that Asian barristers in chambers are underrepresented in comparison to numbers of Asian barristers at the self-employed Bar. Redbrick decides to take positive action to address this issue by advertising tenancy vacancies through the diversity networks as well as in Counsel magazine. This is known as "targeted advertising".

Discrimination by people with the same protected characteristic

33. Individuals with the same protected characteristic can discriminate unlawfully against each other: a woman can unlawfully discriminate against another woman, or a barrister from one ethnic group can unlawfully discriminate against another member of that group.

Unintentional discrimination

34. It is not a defence to claims for discrimination, including harassment and victimisation, that there was no intention to discriminate. Any less favourable treatment (commonly referred to as 'detriment') because of a protected characteristic and in a protected area (e.g. employment or provision of services) is likely to amount to unlawful discrimination.

35. Both direct and indirect discrimination can be either intentional or unintentional.

14. S.20 Equality Act 2010
15. S.26 Equality Act 2010
16. S.158 Equality Act 2010

Service provision

36. In relation to service provision, it is unlawful to discriminate against someone by:

- refusing or deliberately omitting to provide him or her with the service
- refusing or deliberately omitting to provide him or her with services of the same or similar quality or standard and/or
- refusing or deliberately omitting to provide him or her with services in the same manner and on the same terms as would otherwise be provided.

Example

A barrister agrees to take on a case for a person with impaired hearing but only at an inflated hourly rate and brief fee 'because of the extra hassle' that such a case would involve, without any genuine consideration of whether there was real justification for charging higher fees. This is, on the face of it, an unlawful refusal or deliberate omission by the barrister to provide this person with services in the same manner and on the same terms as would otherwise be provided for a person without that impairment.

37. The duty not to discriminate applies to all aspects of the services provided by individual barristers, including but not confined to, core elements of practice, such as accepting instructions, advising in writing or in conference, and providing representation at hearings. The duty also applies in relation to other services provided. For example, where a chambers hires out its conference rooms, it would, on the face of it, be unlawful for the chambers to refuse this service to a religious organisation on the grounds that members of the organisation had views that senior members of chambers considered unpalatable.

38. The rules relating to provision of services apply in exactly the same way to pro bono (unpaid) work as to that for which payment is received.

39. There is an additional duty in relation to disability, to make reasonable adjustments to enable disabled people to make use of a service. There is also a regulatory requirement for chambers to have a reasonable adjustments policy aimed at supporting disabled barristers, staff and visitors to chambers. These matters are considered further in Section 12 about 'Providing Services to Disabled People'.

40. Most of the protected grounds contain limited exceptions from the general prohibition of discrimination in relation to the provision of services. Those exceptions will rarely if ever be applicable to the provision of services by a chambers or barrister, although the ability to provide justification for certain elements of discrimination in relation to disability may be relevant and is considered in Section 12 'Providing Services to Disabled People'.

SECTION 2

Core Duties

Legal Requirements

1. The legal equality requirements for barristers are covered in section 1 above.

Regulatory Requirements – Core Duties

2. The Core anti-discrimination duty is set out at CD8 of the Handbook.

   CD8: "You must not discriminate unlawfully against any person"

3. The Core Duty is supplemented by rC12 which expands and clarifies:

   "You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, pregnancy and maternity, religion or belief".

   This requirement applies to all barristers whether employed or self employed.

4. The fundamental equality principle is drafted to accord with the provisions of the Equality Act 2010 which apply to barristers (s.47) referred to earlier in these guidelines.

5. The requirement not to discriminate applies to a barrister in all aspects of his or her professional life. The requirement not to discriminate applies to a barrister's relationship with "any other person" in the course of his/her professional dealings. Therefore the requirement may be interpreted as covering a barrister's relationship with:

   - Clerks and other chambers' staff
   - Clients
   - Court staff
   - Instructing solicitors and their staff
   - Judges
   - Other barristers
   - Pupils

   (The above list is for the purposes of guidance only and is not exhaustive).

6. Additionally, Core Duty 5 may be relevant in cases of harassment or bullying (see Section 9) or discrimination outside of a barrister's professional practice (where CD8 may not apply).

   CD5 says: "You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession."

   As with Core Duty 8, this applies to all barristers, both employed and self-employed.

   CD5 also applies to unregistered barristers.

7. gC25 of the Handbook states that conduct which is likely to be treated as a breach of CD5 and/or CD3 (honesty and integrity) includes (but is not limited to):

   - unlawful discrimination, victimisation or harassment;
   - seriously offensive conduct towards others;
   - abuse of professional position;
   - breaches of rC8 ("rC8 You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) or independence (CD4)");

8. CD5 is to be interpreted in line with gC27 of the Handbook. This states that CD5 applies at all times and

   "may therefore also be relevant to conduct which occurs in your private or personal life. To assist in considering whether conduct which occurs in your non-professional life is likely to be treated as a breach of CD5 and/or rC8, the BSB considers that the questions set out in the Guidance on the Regulation of Non-Professional Conduct are likely to be relevant."

9. CD5 is also to be interpreted in line with gC96.2 which sets out that serious misconduct includes assault or harassment and may also include serious instances of bullying. Any behaviours falling within the definition of serious misconduct must be reported to the Bar Standards Board, in line with rC66 of the Handbook.

10. See section 9 for further information on harassment and bullying.

SECTION 3

Equality Policy and Action Plan

Legal Requirements

1. There is no legal requirement for chambers to have an equality policy or action/implementation plan.

Regulatory Requirements

2. Rule rC110 (1) & (2) of the BSB Handbook require that a self-employed barrister must take reasonable steps to ensure that in relation to their chambers:

   1) there is in force a written statement of policy on equality and diversity and;
   2) there is in force a written plan implementing the policy.

3. Rule rC110(3)(e) requires that chambers:

   .i conducts a regular review of its policy on equality and diversity and of its implementation in order to ensure that it complies with the requirements of Rule C110; and
   .ii takes any appropriate remedial action identified in the light of that review.

Guidance

"Reasonable Steps"

4. The regulatory requirements place a personal obligation on all barristers to take "reasonable steps" to ensure that an appropriate policy and plans are in place. What steps are reasonable will depend, among other things, on the barrister's position in chambers and therefore his or her ability to influence decision making.

5. It is likely to be reasonable for the BSB to expect that the Head of Chambers has personally ensured the policy and action plan required by these regulations are in place. It is also likely to be reasonable to expect that the Head of Chambers checks, at appropriate intervals, that the policy is effective and that the plan is progressing and to take appropriate steps if they are not.

6. If chambers is run by a management committee, then the responsibilities of the chair of that committee are likely to be similar to those of the Head of Chambers as described above. Other members of the committee are also likely to be expected to be pro-active in putting appropriate systems in place and in ensuring they are working properly.

7. If a barrister has been given responsibility in chambers for pupillage, then the reasonable steps required in relation to ensuring that pupils are treated fairly will be more onerous than would be expected of other people in chambers. Similarly, if a barrister is chambers' Equality and Diversity Officer, or sits on a selection panel, or has any other specific role in chambers, then the reasonable steps required in relation to those matters will be more onerous than would be expected of others in chambers without such responsibilities.

8. If a barrister is a pupil supervisor, it is likely that s/he will be expected to take steps to ensure that their pupils are treated fairly in accordance with the policy and plan.

9. If a member of chambers is very junior, with no formal role in the management of chambers, then the reasonable steps s/he is required to take will be less onerous than for more senior members of chambers or for those who have undertaken specific responsibilities to see that chambers is fairly administered. Even so, if there are mechanisms available to such individuals, to draw attention to ways in which other members of chambers are being treated unfairly, it might well be reasonable to expect that even junior members do that.

10. Similarly, if there are meetings of chambers to agree policies on important issues, such as parental leave or flexible working, even a junior barrister would be expected to take reasonable steps to ensure that chambers' policies are agreed which comply with the equality rules, for example

by raising concerns about non-compliant policies and not voting against compliant ones (unless there were alternative compliant proposals).

11. If the chambers' action plan on equality and diversity has allocated some tasks to a barrister, it would be reasonable to expect that individual to carry out those tasks or to draw attention to any problems if they are unable to do so.

Equality Policy

12. The equality policy should set out chambers' commitment to promoting and advancing equality. It should be clear to readers why the policy has been drafted and the aims it intends to achieve. Chambers are encouraged to ensure that equality policies cover the following areas:

- Recruitment and selection
- Fair access to work and the allocation of unassigned work
- Equality monitoring
- Complaints and grievances

Action Plan

13. Chambers will need to consider what actions it must take to ensure that the principles of equality and diversity are embedded into the framework of its day to day work and to prevent unlawful discrimination taking place. The actions that are required to achieve these aims will naturally differ depending on each chambers' individual circumstances.

14. Equality actions should be "SMART". This means:

a) Specific – i.e. clear, as opposed to vague statements or "ideal scenario" wish lists.
b) Measurable – It should be clear how chambers will know when an action has been completed. Chambers may wish to use numbers, dates and times in order to achieve such clarity (e.g. ensure parental leave policy is included in chambers' induction pack for staff and barristers by a certain date).
c) Affordable – does chambers have sufficient resources to undertake the action?
d) Realistic – is it feasible in all the circumstances for chambers to undertake this action?
e) Timely – a clear deadline, by which each action must be completed, should be set.

15. Action plans should detail the following information:

- The action to be taken (it is also useful to include a summary of the evidence base supporting the action to be taken)
- The name (or job title) of the person who is to be responsible for ensuring the action is progressed/completed
- The deadline by which the action must be completed
- Any update on progress of the action

16. Section 13 contains a sample equality action plan that can be adapted to chambers' individual needs.

SECTION 4

Equality and Diversity Officer

Legal Requirements

1. There is no legal requirement for chambers to appoint an Equality and Diversity Officer.

Regulatory Requirement

2. rC110 (3)(a) of the BSB Handbook requires that a self-employed barrister must take reasonable steps to ensure that chambers has at least one Equality and Diversity Officer.

Guidance

3. The Equality and Diversity Officer should be a senior member of chambers who has been trained in equality and diversity. Advice on suitable courses can be obtained from the Bar Council Equality and Diversity Team whose details may be found in the Directory in section 14.

4. The Equality and Diversity Officer should be prepared to devote sufficient time to the role, including making himself or herself available to members of staff and colleagues to give advice and discuss any problems which may arise.

5. The Equality and Diversity Officer should be responsible for ensuring that:

   - A written equality and diversity policy for chambers is adopted, implemented, then reviewed and kept up-to-date;
   - All chambers policies and procedures (whether or not documented) are reviewed regularly to ensure that they comply with the equality and diversity policy and these guidelines and that records are kept of the outcome of reviews and of action taken in response;
   - Equality and diversity training is provided for all members of chambers and staff including clerks and that refresher courses are provided periodically once initial training has been given;
   - Advice is offered to the Head of Chambers, the senior clerk, the chair of the pupillage committee, members of the chambers management committee and individual members of chambers and staff on equality and diversity issues, both in response to a request and whenever the Equality and Diversity Officer considers that equality and diversity issues arise;
   - He or she is available to individual members or chambers staff to offer advice on equality issues and to provide an informal route, if requested, for the resolution of grievances; and
   - Monitoring data from pupillage, member or staff recruitment exercises, chambers membership, and the allocation of unassigned work is analysed regularly and that any actions necessary to remedy or investigate unfair outcomes are developed and added to chambers' equality action plan.

SECTION 5

Recruitment in Chambers

Legal requirements

The legal requirements set out in Section 1 include a prohibition on discrimination in recruitment and selection on grounds of sex, race, disability, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership, religion or belief, or age.

2. Chambers are also reminded of the duty to make reasonable adjustments for disabled candidates.

3. It is unlawful to ask questions about the health or protected characteristics[17] of an applicant (other than diversity monitoring questions) either orally or in writing:

   - Before offering that applicant a pupillage, mini-pupillage or tenancy
   - Before including that applicant in a pool of applicants from whom it is intended that selection of a pupil, mini-pupil or tenant is to be made.[18]

4. It is also unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention to discriminate either directly or indirectly on any of the prohibited grounds.

Regulatory Requirements

5. Rules rC110(3)(b) requires that "except in unforeseen and exceptional circumstances, the person with lead responsibility for any selection panel and every member of all selection panels must have received recent and appropriate training in fair recruitment and selection processes".

6. Rule rC110(3)(c) requires that "from 1 July 2014, save in exceptional circumstances, every member of all selection panels must be trained in fair recruitment and selection processes.

7. Rules rC110(3)(d) requires that "recruitment and selection processes use objective and fair criteria".

Guidance

8. The same broad principles apply to the recruitment of pupils, starter tenants, established practitioners and staff. The guidance below about aspects of the recruitment and selection process applies
to all categories of vacancy.

9. Detailed guidance on fair recruitment and selection in chambers is set out in the Bar Council's Fair Recruitment Guide for the Bar[19], private study of which is sufficient to satisfy the training requirements set out above. However at least one selection panel member is encouraged to attend a formal classroom course in fair recruitment and selection skills.

10. The term 'recruitment' covers the whole process of filling a vacancy, from seeking applicants to making the selection decision. Selection refers to the process of choosing from among those candidates who have applied, and includes application forms, short-listing, and any mechanisms used to help the decision making process, such as selection tests, references and interviews.

11. Training is defined in the Handbook as "any course of study covering all the following areas:

    - Fair and effective selection and unconscious bias
    - Fair and effective selection and avoiding unconscious bias
    - Attraction and advertising

17. For example questions as to the age of an applicant or enquiries as to whether or not they are planning a family.
18. S60(1) Equality Act 2010
19. Fair Recruitment Guide. Available at: www.barcouncil.org.uk/for-the-bar/professional-practice-and-ethics/equality-and-diversity-guidance/fair-recruitment-guide

- Application processes
- Shortlisting skills
- Interviewing skills
- Assessment and making a selection decision
- Monitoring and evaluation.

12. The Bar Council's Fair Recruitment Guide covers these areas and therefore private study of this document will be considered adequate to satisfy rC110(3)(b)&(c) although classroom course attendance is encouraged for at least one panel member.

13. Training may also be undertaken online or by completion of CPD hours covering the above areas. Information on suitable classroom courses may be obtained from the Bar Council's Equality Team, whose details may be found in the Directory in section

Employees

14. Chambers may need to take advice about contracts and policies applying to clerks and other staff. Fuller guidance can be found on the websites of ACAS[20] and Gov.uk.[21]

20. www.acas.org.uk/index.aspx?articleid=1461
21. www.gov.uk

SECTION 6

Recruitment and Work Allocation Equality Monitoring

Legal requirements

There is no legal obligation on organisations other than certain public sector bodies to gather and analyse diversity data for the purposes of equality monitoring.

Regulatory requirements

2. rC110(3)(f) requires that chambers regularly reviews:

   (i) the number and percentages of its workforce from different groups; and
   (ii) applications to become a member of its workforce; and
   (iii) the allocation of unassigned work.

3. Such reviews include:

   (i) collecting and analysing data broken down by race, disability and gender;
   (ii) investigating the reasons for any disparities in that data; and
   (iii) taking appropriate remedial action.

Guidance

The need for monitoring

4. Equal opportunities policies, by themselves, will not bring about equality. Chambers should have a system for checking whether their policies are being carried out and whether they are working. Without equality monitoring data, it is impossible to establish the nature or extent of any inequality, identify those areas where action is most needed, and whether measures aimed at reducing inequality are succeeding.

5. The purpose of the rules in this section is to ensure that work is not unfairly allocated and that people are not refused employment because of their protected characteristics.

Which protected characteristics should be monitored

6. In relation to applications and allocation of unassigned work the requirement is to gather data on gender race and disability only. However chambers are encouraged to consider monitoring across the other protected characteristics where they believe the results would be useful in supporting their work on equality and diversity.

Definitions of Terms

7. For the purposes of these rules:

- "Regular review" – in respect of data on pupils it is likely to be considered reasonable that regularly should mean annually. In respect of tenants it is likely to be considered reasonable that regularly should mean every three years unless the numbers change to such a degree as to make more frequent monitoring appropriate.
- "Unassigned work" – Unassigned work includes both instructions which are sent into Chambers or the entity (whether in hard copy, electronically or by any other means) and instructions in respect of which any enquiry is made (whether in hard copy, electronically, by telephone, in person or by any other means) prior to them being sent into Chambers or the entity. Work is unassigned work if at the point of enquiry and/or at the point at which it is sent into Chambers the person instructing does not state that it is to be assigned to a named member of Chambers.
- "Investigating" – investigation means considering the reasons for any disparity in the data.
- "Remedial action" – Any action aimed at removing or reducing the disadvantage experienced by particular groups.

Should this monitoring be anonymous?

8. For the purposes of monitoring recruitment and unassigned work allocation, it is important that monitoring data should not be anonymous; it

should be possible to link the equality data to the person to whom it relates. Without this, it is effectively impossible to monitor the recruitment and selection process at each stage or the allocation of work, without repeatedly asking individuals for their diversity data. The identity of individuals can be concealed in the analyses of data by identifying individuals only by a number that can be independently linked back both to their monitoring data and their name.

Collecting monitoring data

9. When requesting equality information, an explanation for its collection should be given. This should state why the information is being requested and for what purposes it will be used. The explanation should emphasise confidentiality and state who will have access to the information. It should also explain that answering the questions is not compulsory.

10. It should also be made clear to those completing the monitoring form that their response to the question on disability will only be used for monitoring purposes. An additional question should be included to enable disabled individuals to raise any need for reasonable adjustments related to their recruitment, employment in or membership of chambers. In the case of recruitment it is good practice to ask applicants whether they require any reasonable adjustments in the recruitment process as part of the covering letter.

Monitoring unassigned work

11. Work monitoring is an active exercise to identify discrepancies in how work is being allocated within chambers so that these can be investigated.

12. Chambers should consider keeping a database of work allocated to pupils, junior tenants and those returning from parental leave. The patterns that need to be considered are earnings, quantity of work and sources of work.

13. Most, if not all, chambers will already keep data on earnings, so the first task for monitoring may be to see whether for example men at a particular call are earning significantly more than women or Black Minority Ethnic (BME) barristers.

How to monitor unassigned work

14. Unassigned work monitoring should be relatively straightforward. Chambers simply has to record whether the work came into chambers marked for a particular barrister/pupil, or whether it was allocated and if so, who it was allocated to and who was responsible for allocating the work. This exercise should pick up patterns of work allocation.

15. For information on how chambers software packages such as Lex and Meridian can be adapted in order to record diversity data in relation to work allocation please visit the equality section of the Bar Standards Board website.[22]

Example
At Bluestone Chambers all unassigned work is entered onto a diary system by one of the clerks in liaison with the Senior Clerk. The assignment of work is then discussed at practice group meetings and the findings are reviewed at management meetings.

Example
Indigo Chambers' computer software registers all cases including unassigned work. An annual report is produced which goes to the Executive Committee.

16. If a disparity is identified the next step is to consider the reasons for any disparity. For example it may be necessary to look at why a man is earning much more than a woman of the same call, or why specific types of cases are being allocated to male members of chambers. In some cases there are perfectly rational and acceptable reasons, e.g. the man has greater skill or the woman has chosen to work fewer hours.

17. It is recommended that a chambers committee, including the senior clerk and Equality and Diversity Officer, meets quarterly to review work allocation reports and decide on what further actions may be necessary.

22. www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity

Example
The Equality and Diversity Officer and the senior clerk review chambers' work allocation data. There are two starter tenants, one female and one male. The female tenant has been receiving a disproportionate number of cases involving allegations of sex discrimination. Following a conversation with the tenant concerned, the Equality and Diversity Officer and the senior clerk decide to hold a refresher equality and diversity training session for the clerking team. At the next review session, the disparity has reduced significantly.

18. If briefing practices are identified which appear to disadvantage individuals from particular groups, for example a tendency to provide female starter tenants with family work irrespective of their stated preference, these should be addressed through the clerks' room. If the issue cannot be resolved through the clerks' room, it will need to be addressed by the Head of Chambers.

Recruitment Monitoring

19. Examining the application rates of different groups enables chambers to gauge whether application rates are proportionate to these groups' representation on the Bar Professional Training Course (for pupillage) or among suitably qualified barristers (for tenancies) or the population from which selection is to be made (for chambers' staff). Statistical diversity data on the profession may be downloaded from the BSB website.[23]

20. Where under-representation of particular groups is identified, chambers may wish to consider using positive action to encourage applications from members of those groups. Further information on positive action is provided in Section 1.

Shortlisting

21. Chambers should check whether the representation of different groups among those shortlisted is proportionate to their representation among applicants. If there is a disparity, the reasons for different shortlisting rates should be investigated.

Interview stage

22. The success rates for different groups at the interview stage should be examined. Any differences should be investigated to ensure that there is no direct or indirect discrimination in the treatment of candidates. Exercises used at this stage should be reviewed if the analysis suggests that they are contributing to disparities.

Appointments

23. As well as stage by stage comparisons it can be useful to look at the overall likelihood of different groups being appointed, i.e. the proportions of appointments from each group. Small disparities at each stage may combine to create a large disparity that needs to be addressed.

24. Further information on recruitment monitoring and other aspects of best diversity recruitment practice can be found in the Bar Council's Guide to Fair Recruitment.[24]

23. www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-act-2010-publication-of-information

24. www.barcouncil.org.uk/for-the-bar/professional-practice-and-ethics/equality-and-diversity-guidance/fair-recruitment-guide

SECTION 7

Workforce Diversity Data Collection and Publication

Legal Requirements

1. There is no legal requirement for chambers to collect and publish diversity data.

Regulatory Requirements

2. rC110(3) (n) – (t) require that:

(n) Chambers has a Diversity Data Officer;

(o) Chambers must provide the name and contact details of the Diversity Data Officer to the Bar Standards Board and must notify the Bar Standards Board of any change to the identity of the Diversity Data Officer, as soon as reasonably practicable.

Responsibilities of the Diversity Data Officer:

(p) The Diversity Data Officer complies with the requirements in relation to the collection, processing and publication of diversity data set out in the paragraphs rC3(3)(q) – (t) below.

Collection and Publication of Diversity Data

(q) The Diversity Data Officer shall invite the members of the workforce to provide diversity data in respect of themselves to the Diversity Data Officer using the prescribed model questionnaire set out at the end of this section.

(r) The Diversity Data Officer shall ensure that such data is anonymised and that an accurate and updated summary of it is published on chambers' website every three years. If chambers does not have a website, the Diversity Data Officer shall make such data available to the public on request.

(s) The published summary of anonymised data shall:

(i) exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent; and

(ii) (subject to the foregoing) include anonymised data in relation to each characteristic, categorised by reference to the job title and seniority of the workforce.

(t) The Diversity Data Officer shall:

(i) ensure that chambers has in place a written policy statement on the collection, publication, retention and destruction of diversity data which shall include an explanation that the provision of diversity data is voluntary;

(ii) notify the workforce of the contents of the written policy statement; and

(iii) ask for explicit consent from the workforce to the provision and processing of their diversity data in accordance with the written policy statement and these rules, in advance of collecting their diversity data.

Guidance

3. These requirements apply only to self-employed barristers, however employed barristers may be subject to similar requirements imposed by their employer or another regulator. This guidance is primarily intended for self-employed barristers.

Why Gather Diversity Data?

4. Equality policies by themselves will not bring about equality. Through the collection and analysis of data chambers are in a position to ensure that checks can be made on whether or not policies and action plans are being implemented and whether or not they are working. Without data, it is impossible to establish the nature or extent of any inequality and therefore devise appropriate measures to reduce or remove it.

What does Chambers have to do?

5.
- Chambers must ensure that there is a Diversity Data Officer (DDO).
- The identity of chambers' DDO should be provided to the Bar Standards Board either by email contactus@barstandardsboard.org.uk or phone 0207 242 0082.

The Diversity Data Officer

6. Each chambers is required to appoint a chambers' Diversity Data Officer. The Diversity Data Officer is responsible for implementing the rules relating to the collection and processing of Diversity Data, and for demonstrating compliance by providing the Bar Standards Board with any documents or information reasonably requested for that purpose. The identity of the Diversity Data Officer must be notified to the Bar Standards Board as soon as reasonably practicable following their appointment, or any change in their identity.

7. The individual appointed to be the Diversity Data Officer may, but need not be, the person appointed as Equality and Diversity Officer.

8. In addition, the Diversity Data Officer may, but need not be, the same individual as the data controller. In some cases, it may make sense for one individual to perform both roles. However, the roles are distinct: The data controller has specific statutory responsibilities under the Data Protection Act with respect to personal data whereas the Diversity Data Officer is responsible to the Bar Standards Board for compliance with the rules relating to the collection and processing of Diversity Data. The Diversity Data Officer need not be a barrister.

What does Chambers DDO have to do?

9. The DDO ensures that:

- The members of chambers workforce are offered the opportunity to provide diversity data covering age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities.
- Anonymised summary data was published on chambers website by 31 December 2012 in the first instance and then every three years thereafter.
- Data is broken down by seniority and job title (e.g. Queen's Counsel, juniors, pupils, directors and general managers, senior clerks, junior clerks, and other administrative staff).
- There is a written Diversity Data policy in place which sets out when and how data will be collected. A sample policy may be found in Section 13.
- There is explicit consent to the collection and processing of diversity data before collection commences. A sample notification and consent form may be found in Section 13.
- The data is collected and processed securely and in accordance with the provisions of the Data Protection Act 1998.
- Individuals are informed that they may withdraw their consent to the processing, collection or publication of some or all of their diversity data at any time.

Be Aware

10. Chambers should aim to publish diversity data gathered unless:

- The number of individuals in chambers workforce is fewer than 10 (ten), save in cases where there is consent from all members of chambers' workforce.
- The number of individuals identified with any characteristic within any category is fewer than 10 (ten), save in cases where there is consent from all those to whom the data in question relates.

Personal Choice

11. Provision by individuals of their diversity data is entirely voluntary. No one can be compelled to provide diversity data and it should be made clear in chambers' diversity monitoring exercises, that disclosure of such information is not obligatory.

12. Notwithstanding the above, it is important that all those in chambers are made aware of the benefits of providing such data and that collection and publication of the data at the level of individual chambers can help build a useful picture of the developing diversity profile of those chambers and of the workforce across the Bar as a whole.

How to Collect the Data

13. All individuals in chambers' workforce (i.e. barristers and non-barristers who work within chambers) must be given the opportunity to complete the Legal Services Board diversity questionnaire. The questionnaire can be found at the end of this section. Chambers may create its own questionnaire however it must contain the same questions and categories as used in the model LSB questionnaire and it must contain a "prefer not to

say" option for each question.

How to produce a diversity data collection policy

14. The Diversity Data Officer is responsible for producing a written policy on the collection and use of Diversity Data. A sample policy is set out in Section 13.

15. The written policy must include:

    a. Details of when and how the data will be collected;
    b. The names of the registered data controller and the Diversity Data Officer;
    c. An explanation that the provision of Diversity Data is voluntary and that individuals may withdraw their consent to the use of their data at any time;
    d. An explanation of how the data will be collected and the purposes for which it is being collected;
    e. A statement that the anonymised data will be published online in summary form or made available to the public on request by the chambers, except where there are reasonable grounds to believe that publication of the anonymous data would result in the identification of an individual in connection with one or more of the diversity characteristics;
    f. An explanation of how the data will be held, and the security measures in place to protect the identity of individuals in connection with the diversity characteristics;
    g. An explanation of how the data will be anonymised;
    h. When and how the anonymised data will be published; and
    i. How and when the Diversity Data will be deleted/destroyed.

16. A sample Diversity Data Policy is included in Section 13 to this document however please note use of the sample policy does not guarantee compliance by chambers with their legal and regulatory requirements. Chambers' should amend the sample Diversity Data Policy to ensure that it is suitable, having regard to their individual circumstances.

Consent

17. In order lawfully to collect Diversity Data from individuals, chambers must obtain the explicit consent of individuals before collection takes place. This is required because of the rules under the Data Protection Act concerning the processing of sensitive personal data. All Diversity Data, of whatever nature, should be treated as if it were sensitive personal data for the purposes of compliance with the rules.

18. To demonstrate that explicit consent has been obtained, chambers should be able to show that individuals have been informed about how their personal data will be used and that the provision of their personal data is voluntary. Chambers should also be able to show that individuals have been told that by providing their Diversity Data they are explicitly consenting to the collection and use of their personal data for the purposes for which they are notified. This may be done by providing individuals with a copy of chambers' written Diversity Data policy when they are invited to provide their Diversity Data.

19. Consent to the collection and use of the Diversity Data must be freely given, and it is the responsibility of all Heads of Chambers and Diversity Data Officers to ensure that it is made clear that there is no obligation to respond and that the provision of Diversity Data is entirely voluntary.

20. A sample notification and consent form is set out at Section 13.

21. Chambers must ensure that there are no internal procedures or behaviours which could reasonably be considered to compel individuals to provide their Diversity Data. For instance, the provision of Diversity Data should be obtained through a separate mechanism from any other collection of information from members of the workforce. This should mean that a separate form or questionnaire and separate notification is used. The request for Diversity Data should be made in isolation from any other requests for information and, in particular, should in no way be linked or associated with any appraisal or performance review.

Identification of individuals

22. All members of the workforce must be informed if the Diversity Data Officer considers that there is a risk that publication of the anonymised data could lead to identification of diversity characteristics in connection with an individual, in order that consent to publication is given in the knowledge of that risk. This risk may be evident at the time the data is collected, or thereafter, but must be notified to members of the workforce prior to publication in order that consent is provided or declined to publication accordingly.

Security of Diversity Data

23. Chambers must implement appropriate systems and measures to protect Diversity Data against unauthorised or unlawful access and use of the Diversity Data, and against accidental loss or destruction of, or damage to, the Diversity Data.

24. In ensuring Diversity Data (whether containing personal data or anonymised) is kept securely, chambers should, as a minimum:

    a. Take physical measures to protect hard copies from unauthorised access or damage including, for example, keeping the data in a secure locked drawer or box;
    b. Have access controls so that only those persons whose role requires them to access the Diversity Data are able to access it (for example, any IT specialists assisting with anonymisation);
    c. Encrypt removable media on which the data is stored, including tapes, disks, removable hard drives, CDs and DVDs; and
    d. Include confidentiality provisions in any outsourcing arrangement with a third party who may process the Diversity Data on behalf of the chambers.

25. The Diversity Data Officer is responsible for establishing secure electronic and physical barriers to the Diversity Data. Only those persons whose business role requires them to have access should have access and all such personnel, including the Diversity Data Officer, must be informed about the confidentiality of the Diversity Data and, where necessary, receive appropriate training about how to use the Diversity Data.

26. In the event of accidental or unlawful destruction, loss, alteration, disclosure of, or access to, the Diversity Data which is likely to adversely affect the privacy of individuals, the Diversity Data Officer must investigate the incident and take action to mitigate the consequences such as seeking to recover the affected data, rectifying the circumstances that led to the incident and putting in place measures to ensure that such an incident is not repeated. In particular, the Diversity Data Officer must promptly notify:

    a. the Information Commissioner's Office; and
    b. where the Information Commissioner's Office so advises, the individuals likely to be affected.

Anonymisation, retention and destruction of Diversity Data

27. Chambers must anonymise Diversity Data as soon as reasonably practicable in order to ensure that individual members of the workforce cannot be identified in connection with their diversity characteristics.

28. Chambers shall be entitled to retain anonymised data indefinitely and must do so for at least 12 (twelve) months after publishing the data in order that copies may be provided to the Bar Standards Board on request. For the avoidance of doubt, the Bar Standards Board will not in any circumstances seek access to unanonymised Diversity Data.

Withdrawal of Consent

29. Individuals should be informed that they have a right to object to the collection and use of their Diversity Data at any time, even if they have consented on a previous occasion, and to withdraw consent at any time.

30. In the event that an individual withdraws their consent chambers should promptly delete or destroy any Diversity Data which includes the personal data of that individual and inform the individual within at least 21 days of receiving notification of the withdrawal of consent.

31. On receipt of a withdrawal of consent or objection and where the anonymised data has already been published in summary form, there is no requirement to extract that individual's personal data from the published summary unless the individual alleges that continued publication of the anonymised data is causing or is likely to cause them or someone else substantial damage or distress.

Publication

32. In accordance with the equality rules which came into force in September 2012, chambers should have published its first summary of the anonymised data by 31 December 2012.

33. The rules require that following this initial publication, data must be published every three years. "Publication" means publishing on chambers' website however where chambers do not have a website, anonymised information should be made available to the public on request.

34. There is no longer an additional restriction on the publication of sexual orientation and religion or belief data: the data monitoring requirements set out at rC110.3(q-s) of our Handbook apply consistently across all diversity characteristics, which are set out in the model diversity data questionnaire at the end of this section.

35. Although they may choose to do so, chambers and BSB entities are not required to re-run their data collection and publication processes, other than in the normal three-yearly cycle required by the Equality Rules of our Handbook (rC110.3.r).

36. Within chambers and BSB entities, diversity data officers (DDOs) are responsible for implementing our rules on diversity data monitoring. Following the removal of the additional restriction on the publication of sexual orientation and religion or belief data, DDOs will need to update their written policy statement on the collection, publication, retention and destruction of diversity data (rC110.3.t.i).

37. Chambers and BSB entities are required to take care when processing sensitive personal data, including data about sexual orientation and religion or belief:

    a. They must be satisfied that workforce members who consent to data publication are fully aware of what it entails, particularly if fewer than ten people fall into a particular category of data.
    b. If an individual withdraws consent, and they are one of fewer than ten people whose data falls into a category of sexual orientation or religion or belief, then the relevant data must be removed immediately from the chambers' or BSB entitity's website; and
    c. In exceptional circumstances, and even if there is no real risk of individuals being identified, chambers and BSB entities may have justifiable reasons for not publishing sexual orientation and religion or belief data.

38. Regarding point c. the non-publication of sexual orientation and religion or belief data may be appropriate where a chambers or BSB entity has a high-representation of a particular category of sexual orientation or religion or belief, which creates a real threat to security or business continuity. For example. unwanted protests or disruptive media attention. Situations like this are unlikely but may be more likely to occur in certain areas of practice, or because of a high-profile case or member of chambers.

39. DDOs are required to demonstrate compliance with our rules about diversity data monitoring, by providing us with any documents or information reasonably requested for that purpose. We may ask DDOs to provide us with an explanation if their chambers or BSB entity does not publish a summary of data on sexual orientation and religion or belief, in the next round of the three yearly cycle.

What should data look like?

40. The summary of anonymised data should include a breakdown of each diversity characteristic in a manner which reflects seniority e.g. categories representing Queen's Counsel, junior tenants and pupils, and from non-barrister members in categories representing directors and general managers, senior and junior clerks and other administrative staff.

41. Notwithstanding efforts made to anonymise data, rare combinations of characteristics will generally lead to the identification of individuals. The summary of anonymous data must not include any analysis that links responses against different diversity characteristics or individuals. Eg. the analysis should not indicate that there are 11 female barristers of which one considers herself to be disabled.

42. If there is a real risk that the publication of the summary of anonymous data would result in the identification of an individual in respect of one or more of their diversity characteristics, chambers are not required to publish that part of the information unless it has consent from the individuals affected.

The "Less than 10 Rule"

43. As a general rule the risk of identification is considered more likely to occur where the number of individuals with any particular characteristic within any category is fewer than 10.[25]

> Example
> Greendale chambers has 4 junior tenants who identify themselves as disabled. Greendale's DDO does not publish data in respect of this group as consent was not given by each of the 4 tenants for this to happen.

44. If consent from all those affected is not obtained chambers should still aim to publish a summary of the data expressed in headline terms to indicate a general picture of diversity at chambers, e.g.: Greendale chambers has an underrepresentation of women at QC level and an underrepresentation of BME pupils. It currently has no pupils above the age of 40 and most of the tenants are men.

45. Data can be published using either percentages or numbers and can be presented in graph or table format. Data may be presented as is set out at figs.1 and 2 below.

46. Numbers fewer than 10 in a given category can be represented using an asterisk or a range (e.g. <10).

25. The approach of not requiring publication of diversity data where those in a particular group are fewer than 10 derives from and is supported by government guidance on the approach to be taken by public bodies in publishing their own diversity data: 2013. This guidance may be downloaded from: www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/specific-duties

MODEL DIVERSITY DATA QUESTIONNAIRE

Please answer each question in turn by choosing one option only, unless otherwise indicated. If you do not wish to answer the question please choose the option "Prefer not to say" rather than leaving the question blank.

About you

If you are an authorised person[26] for the purposes of the Legal Services Act 2007 (i.e. you hold a practising certificate issued by one of the approved regulators), please indicate your professional qualification(s) and role (tick all that apply if you are dual qualified and have a current practising certificate from more than one approved regulator):

		P
Barrister	QC	
	Tenant / Member	
	Other (including Pupil)	

If you do not fall into any of the categories listed above, please indicate which of the following categories best fits your role:

	P
Any other fee earning role (e.g. trainee solicitor, legal executive (not Fellow), paralegal)	
Any role directly supporting a fee earner (e.g. legal secretary, administrator, barristers clerk, practice manager, legal assistant, paralegal)	
A managerial role (e.g. Director / non-lawyer Partner / Chief Executive / Practice Director or similar, Head of Legal Practice (HoLP) / Head of Finance & Administration (HoFA) or similar)	
An IT/HR/other corporate services role	
Prefer not to say	

Your role in your organisation

Please note that this question applies to self-employed as well as employed persons.

(a) Do you have a share in the ownership of your organisation (e.g. equity partner, shareholder)?

	P
Yes	
No	
Prefer not to say	

26. The definition of an "authorised person" is set out in the Legal Services Act 2007, Section 18(1). For the purposes of this Act "authorised person", in relation to an activity ("the relevant activity") which s a reserved legal activity, means – (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or (b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity.

(b) Do you have responsibility for supervising or managing the work of lawyers or other employees?

	P
Yes	
No	
Prefer not to say	

Age

From the list of age bands below, please indicate the category that includes your current age in years:

	P
16 – 24	
25 – 34	
35 – 44	
45 – 54	
55 – 64	
65+	
Prefer not to say	

Gender

What is your gender?

	P
Male	
Female	
Prefer not to say	

Gender

This following question is designed to gather trans data i.e. whether your gender identity and/or gender expression differs from your birth sex. A trans person may or may not seek to undergo gender reassignment hormonal treatment/surgery.

Is your gender the same as you were asigned at birth?

	P
Yes	
No	
Prefer not to say	

Disability

The Equality Act 2010 generally defines a disabled person as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities.

(a) Do you consider yourself to have a disability according to the definition in the Equality Act?

	P
Yes	
No	
Prefer not to say	

(b) Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?

	P
Yes, limited a lot	
Yes, limited a little	
No	
Prefer not to say	

Ethnic Group

What is your ethnic group?

Mixed/multiple ethnic groups

	P
White and Asian	
White and Black African	
White and Black Caribbean	
White and Chinese	
Any other mixed/multiple ethnic background (write in)	

Asian / Asian British

	P
Bangladeshi	
Chinese	
Indian	

Pakistani	
Any other Asian background (write in)	

Black / African / Caribbean / Black British

	P
African	
Caribbean	
Any other Black / Caribbean / Black British (write in)	

White

	P
British / English / Welsh / Northern Irish / Scottish	
Irish	
Gypsy or Irish Traveller	
Any other White background (write in)	

Other ethnic group

	P
Arab	
Any other ethnic group (write in)	
Prefer not to say	

Religion or belief

What is your religion or belief?

	P
No religion or belief	
Buddhist	
Christian (all denominations)	
Hindu	
Jewish	
Muslim	
Sikh	
Any other religion (write in)	
Prefer not to say	

Sexual orientation

What is your sexual orientation?

	P
Bisexual	
Gay man	
Gay woman / lesbian	
Heterosexual / straight	
Other	
Prefer not to say	

Socio-economic background

(a) If you went to University (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?

	P
Yes	
No	
Did not attend University	
Prefer not to say	

(b) Did you mainly attend a state or fee paying school between the ages 11 – 18?

	P
UK State School	
UK Independent / Fee-paying School	
Attended school outside the UK	
Prefer not to say	

Caring responsibilities

(a) Are you a primary carer for a child or children under 18?

	P
Yes	
No	
Prefer not to say	

(b) Do you look after, or give any help or support to family members, friends, neighbours or others because of either:

– Long-term physical or mental ill-health / disability

– Problems related to old age

(Do not count anything you do as part of your paid employment)

	P
No	
Yes, 1 – 19 hours a week	
Yes, 20 – 49 hours a week	
Yes, 50 or more hours a week	
Prefer not to say	

Thank you for completing this questionnaire

SECTION 8

Fair Access to Work

Legal requirements

The legal requirements set out in Section 1 (Basic Principles) prohibit discrimination in relation to employment, and employment discrimination includes discrimination in access to opportunities for promotion or training.

2. The law also prohibits the issuing of instructions to discriminate, or exerting pressure to discriminate, on any of the protected grounds.

3. The discrimination legislation also makes it unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person or subject any person to harassment.

Regulatory requirement

4. rC110(3)(i) requires that the affairs of chambers are conducted in a manner which is fair and equitable for all members of chambers, pupils and/or employees. This includes, but is not limited to, the fair distribution of work opportunities amongst pupils and members of chambers.

Guidance

5. The guidance below relates to four issues raised by the regulatory requirement: the allocation of work in chambers; dealing with discriminatory instructions or pressure to discriminate; practice development; and marketing of barristers and pupils.

Allocation of work

6. The development of a successful practice is often influenced by the range and quality of instructions received by a barrister, particularly during pupillage and in the early stages of their career. Different types of work provide the opportunity for newly qualified barristers to explore areas of interest, build on their skills and ultimately develop a successful career at the Bar. It is therefore in the shared interest of both chambers and their members that work is allocated fairly and that particular attention is paid to this in the development of pupils, starter tenants and those returning from parental leave.

7. Chambers should seek to ensure, where possible, that instructions and briefs are not delivered by solicitors at such times as to preclude those with childcare and other dependent care commitments from being eligible for that work (for example, where a brief is not delivered until Friday afternoon for a trial on Monday). If a brief arrives at the last minute, consideration should be given to whether it can be forwarded electronically, for example by scanning and emailing it. Late delivery of briefs may also disadvantage disabled barristers who may require the court to make adjustments for them which cannot be made on the morning of a trial or hearing.

8. Where chambers takes pupils, it is recommended that there is a policy of actively rotating briefs to ensure that pupils in their second-six receive a fair range of different types of work. It is also recommended that reviews with pupils and starter tenants include a discussion of the types of work they have received to ensure that this is supporting their development.

9. Senior members of chambers and clerks play particularly important roles in the allocation of work since both may be asked by clients for their views as to who would be suited to a particular piece of work. It is recommended that chambers provide clerks with diversity training and brief them on the importance of fair allocation of work. Chambers should also have in place procedures for dealing effectively with complaints or concerns about allocation of work.

Potentially discriminatory requests/ instructions from solicitors

10. S.47 (6) Equality Act 2010 makes it unlawful for any person in instructing a barrister, to discriminate against them. This includes clients, clerks and solicitors. In addition, the Solicitors Regulation Authority handbook 2011 prohibits solicitors from discriminating unlawfully against any person in the course of their professional dealings. Such dealings will include the instruction of barristers.

11. Chambers should ensure that clerks are aware of the legal position and the requirement that work is distributed fairly.

12. Clerks may receive requests that are discriminatory, for example requests from solicitors for a barrister of a particular sex or race

for a particular piece of work. Faced with such requests, clerks should explain that they are unlawful. If possible they should try to explore the reasons for the request. It may be claimed in the course of the discussion that the request has originated with the client. This is not a justification. Further discussion between the clerk and the solicitor may help to clarify the reason for the request, which may be based on stereotypical assumptions and it may be possible to meet the underlying need in a non-discriminatory way.

Example

A solicitor asks which male barristers are available to do a trial. The clerk asks why the solicitor is asking for a male barrister, and the solicitor says that the litigation has been very acrimonious, and that the client wants a robust cross-examiner who will not be intimidated by the opposition. The clerk says he cannot put forward counsel on the basis of their sex, but can recommend several barristers who are available and who have reputations as robust and fearless cross-examiners. The list includes both women
and men.

13. On no account should clerks comply with any request or requirement to discriminate on unlawful grounds in the choice of barristers. Should the solicitor refuse to modify or withdraw the request and continue to insist on a discriminatory allocation of work, the work should be politely refused, the clerk should make a full note of the incident immediately, and the solicitor should be reported to his or her professional disciplinary body.

Practice development

14. Chambers should arrange regular practice development meetings for tenants. The purpose of these meetings is to enable discussion of work allocation, work opportunity and development of individual practices. Pupil supervisors should discuss these issues with pupils and, where appropriate, the clerks and the Equality and Diversity Officer.

15. Chambers are encouraged to set up mentoring schemes where advice and guidance can be offered regarding practice development. A junior tenant may be a pupil's mentor, and a more senior tenant may act as a mentor to a more junior tenant or to any member of chambers who requests a mentor. For example, a barrister returning from parental leave may nominate a more senior member of chambers as a mentor who can offer advice and support before and on his or her return to practice.

Marketing of barristers and pupils/ Networking activities

16. Chambers should ensure that marketing and networking activities, such as giving or attending seminars and lectures and social activities such as quiz nights and sporting activities, are organised so that all pupils and tenants can, so far as practicable, be equally involved. This extends to opportunities for pupils and junior tenants to get to know more senior members of chambers and the clerks.

17. Chambers may find formal practice groups a useful means of integrating pupils and members of chambers and ensuring that marketing and networking opportunities are publicised within chambers and allocated fairly.

SECTION 9

Harassment and Bullying

Legal requirements

1. Harassment is unlawful under section 26 of the Equality Act 2010.[27] It includes any form of unwanted conduct relating to age, disability, gender reassignment, race, religion or belief, sex or sexual orientation which has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person or, in some cases, a witness to the conduct. A witness does not need to have the protected characteristic in question to experience it as harassment.
2. Sexual harassment is unlawful under section section 26(2) of the Equality Act 2010.[28] This is where a person engages in unwanted conduct of a sexual nature towards another person and the conduct has any of the above purposes or effects.
3. Under section 26 (3) of the Equality Act[29] harassment also occurs when a person is treated less favourably because they have either rejected or submitted to conduct that is either unwanted conduct of a sexual nature, or which amounts to harassment linked to the protected characteristics of sex and/or gender reassignment.
4. Section 47 of the Equality Act 2010[30] places a a prohibition on barristers harassing pupils or tenants or anyone who has applied for a pupillage or a tenancy. It also makes it unlawful for a person to harass a barrister in relation to instructing that barrister. This means that, for example, an instructing solicitor who makes unwanted comments related to the protected characteristic(s) of a barrister they have instructed might be unlawfully harassing the barrister.
5. The Worker Protection (Amendment of Equality Act 2010) Act 2023[31] also requires employers to take steps to prevent sexual harassment. The Employment Rights Act 2025[32] expands on this duty to include protection from harassment by third parties, for example contractors, clients or customers. Guidance about these obligations can be found on the Equality and Human Rights Commission's website.[33]

27. S.26 Equality Act 2010
28. S.26 Equality Act 2010
29. S.26 Equality Act 2010
30. S.26 Equality Act 2010
31. Worker Protection (Amendment of Equality Act 2010) Act 2023 https://www.legislation.gov.uk/ukpga/2023/51
32. Employment Rights Act 2026 https://www.legislation.gov.uk/ukpga/2025/36/section/20

clients or customers. Guidance about these obligations can be found on the Equality and Human Rights Commission's website.[33]

6. While the Bar Standards Board Handbook defines harassment by reference to section 26 of the Equality Act 2010, harassment or bullying (see paragraphs 7 and 9) which occurs outside of the context of a traditional employment relationship or the circumstances set out in section 47 (see paragraph 4 above) may nevertheless constitute a breach of the BSB Handbook (including, for example, Core Duty 5).[34]
7. There is no legal definition of bullying, but we have, following the recommendation of the Independent Review of bullying, harassment and sexual harassment at the Bar, updated the Handbook to include bullying as an example of potential serious misconduct. GC96.2 defines bullying as 'persistent, unwanted behaviour from a person or group that is either intimidating, malicious or insulting, or an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone.'

Regulatory requirement

8. rC110(3)(j) requires that chambers have a a written anti-harassment policy which as a minimum:
   (i) states that harassment will not be tolerated or condoned and that employees, members of chambers, pupils and others temporarily in it occurs;
   (ii) sets out how the policy will be communicated;
   (ii) sets out the procedure for dealing with complaints of harassment. This should include both formal and informal resolution.
9. We recommend that chambers' anti-harassment policy also prohibits bullying. Some instances of bullying could be serious misconduct that needs to be reported to the BSB or the Commissioner for Conduct. Some behaviours that fall within the Handbook definition of bullying under gC96 may also constitute harassment. Chambers should ensure their

33. Equality and Human Rights Commission https://www.equalityhumanrights.com/guidance /sexual-harassment-and-harassment-work-technical-guidance
34. Bar Standards Board Handbook https://www.barstandardsboard.org.uk/the-bsb-handbook.html

their policy sets out the process for resolving general or less serious incidents of bullying, along with details of the support or protection available for someone who has made a report to the BSB Commissioner for Conduct.

Guidance

10. Harassment and bullying are particularly difficult issues because behaviour that one person may be able to ignore or deal with comfortably may nevertheless constitute harassment or be interpreted as bullying if directed at another. Further, a person can be harassed by behaviour which is not directed at him or her but at another person. A single incident may constitute harassment if it is sufficiently serious. While the motive or intention of the alleged perpetrator may be relevant, the effect or impact of the conduct is what matters.

11. As noted above (paragraphs 1 to 4) harassment is unlawful under equality legislation and certain types of harassment may also constitute a criminal offence. Although bullying is not unlawful it could amount to a breach of Core Duties 3 and 5, and where chambers directly employ staff, it could lead to other legal issues. For example, if an employee is subject to persistent, severe bullying, a failure to address it could contribute towards constructive dismissal.

Dealing with bullying and harassment

12. Those experiencing harassment may be Those experiencing bullying and harassment may be afraid to complain. They may fear that their complaint will be trivialised or that they will be subject to ridicule or reprisals or that nothing will be done. By undertaking certain specific steps, chambers can make it clear to members, pupils and employees that bullying and harassment will not be tolerated. It could also reduce the risk of chambers being subject to a claim of victimisation in relation to a report of harassment, if the person who made the report is then subject to a detriment.

13. In particular,the following are recommended:

- active promotion of chambers' anti-harassment and bullying policy at regular intervals and to all new joiners;
- Introducing bullying and harassment training for all members, employees and pupils at the chambers at regular intervals (for example, a minimum of every three years);
- An independent, objective, sensitive and fair procedure for the internal investigation of complaints;
- Provision in the bullying and harassment policy of an informal process of resolving complaints;.
- Designation of an advisor or point of contact to assist those who have been subject to harassment or bullying. In the interests of fairness, someone may also be provided to support the alleged perpetrator;
- A principle of treating violations of the anti-harassment and bullying policy as a disciplinary offence;
- Ensuring there are policies and processes around the recruitment of mini-pupils and there is a clear point of contact for any issues that may arise.

Policy requirement

14. As noted at paragraph 8, **rC110(3)(j)** of the Code of Conduct in the BSB Handbook requires each chambers to have an anti-harassment policy. Written policies and procedures should be reviewed regularly and at least every two years.

15. The Bar Council's Tackling Bullying, and Sexual Harassment: a toolkit for chambers provides a model chambers anti-bullying, harassment and sexual harassment policy.

Further information

16. For more information on how the BSB handles reports of bullying and harassment and support available for individuals, including details of our independent support service from Victim Support, please visit the BSB's Bullying and Harassment web pages.[35]

35. Bar Standards Board Bullying and Harassment web pages https://www.barstandardsboard.org.uk/for-barristers/bullying-and-harassment.html

SECTION 10

Parental Leave

1. "Parental leave" refers to leave taken by the main carer of a child following birth or adoption. This could be the mother, father or adoptive parent of either sex.

Legal requirements

2. Employees of chambers are covered by the legislation relating to parental leave. An explanation of this legislation can be found on the relevant part of the GOV.UK website.[36] Self-employed barristers are not covered by employment law however chambers must avoid any direct or indirect discrimination because of sex in the arrangements and decisions made in relation to such leave.

Regulatory requirements

rC110(3)(k) requires that chambers has a parental leave policy which covers as a minimum:

i) The right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave.
ii) The extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave.
iii) the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave (where any element of rent is paid on a flat rate basis) the chambers policy must as a minimum provide that chambers will offer members taking a period of parental leave or leave following adoption, a minimum of 6 months' free of chambers rent
iv) The procedure for dealing with grievances under the policy. Chambers' commitment to regularly review the effectiveness of the policy.

4. Where rent is paid on a flat rate basis, chambers must offer its members taking a period of parental leave, or leave following adoption, a minimum of six months free of chambers' rent.

Guidance

This guidance relates to best practice for chambers in respect of parental leave.

Rent-free periods

6. Although the parental leave provision, in terms of a reduction in payment of chambers rent, is less generous than other professions in which those on parental leave typically have a continuing right to income from a partnership or employment. The minimum leave period of six months reflects trends in other professions. In practical terms, a six month rent free period may make the difference between a member being able to afford to take up his/her place in chambers at the end of a period leave, and being unable to afford to do so.

7. Parental leave policies may need to cover non-rental payments such as the interest and re-payments on investments or mortgages or clerks' fees paid on a percentage basis and any contributions payable in respect of one-off investments, as appropriate.

Example

Chambers has purchased its own premises. Some members of chambers own a share in the premises, others do not. Repayments of capital and interest are split between those who own a share in proportion to the size of their shares, and chambers as a whole pays rent to the members who collectively own the premises. Chambers offers the required six month rent free period but decides not to extend this to the mortgage repayments as such payments are made as an investment in the premises. This approach would be permitted under the rules although should chambers wish to cover mortgage payments for a member on leave as a gesture of investing in that individual and retaining talent in chambers, this would be considered best practice and is encouraged.

8. A policy should allow the flexibility for a longer rent-free period. At the same time, a constructive

36. www.gov.uk

attitude to work during parental leave should be encouraged to permit members of chambers to 'keep their hand in' and continue to feel a valued member of chambers and of the Bar.

Example
A member of chambers is on parental leave for six months. Her chambers charges a fixed rent and has a policy which makes clear that informal working arrangements during parental leave do not affect a member's entitlement to a six month rent free period, provided that the head of chambers is kept informed of the arrangements by the member of chambers and is satisfied that the level of work being undertaken does not constitute a return to practice. The member of chambers is therefore able to continue to accept instructions to do paperwork from a small number of solicitors while she is on leave, usually working from home on days when a family member can assist with childcare. This enables her to build up her practice much more quickly when she returns to chambers.

9. The minimum rent-free periods required are not intended to discourage chambers from adopting a more generous policy.

Example
Greenway chambers offers a £10,000 credit for all barristers and pupils returning to chambers from a period of parental leave. The credit can be used against all chambers expenses rather than solely against the flat rate element of the rent. This sum is fixed.

Example
Redway chambers operate a percentage system for rent based on the individual's previous year's receipts. Even though Redway operates a percentage based system it offers those taking a period of parental leave six months free of rental payments. It also permits the deferral of rental payments after the six month relief period for a further six months effectively entitling new parents to a year's rent relief.

Example
Orangewood chambers calculates rent on a percentage of receipts basis. It allows members taking a period of parental leave to pay only 5% on all receipts for up to six months of leave. Normally members pay 10% so those on parental leave receive a 50% discount.

Right to return to chambers

10. Chambers are encouraged to offer a longer period than the year required by this code.

Example
After increasing its pupillage awards, chambers has recruited a number of tenants from its pupils who have developed very successful junior practices. These include a number of women and a gay man who wishes to adopt a child. Chambers is keen to retain its junior tenants and to adopt policies which enable them to balance their family and work commitments. It adopts a parental leave policy which applies to any member of chambers who has primary responsibility for a child, including a newly adopted child of any age, and a career break policy which entitles members of chambers, on giving three months' notice to chambers, to give up their room and be released from their obligations to pay fixed rent to chambers, while retaining the right to return to chambers, again on three months' notice, at any stage up to five years after their career break began.

Assistance to work during parental leave or career break and to return to chambers

11. Chambers are encouraged to respond positively to members' wishes to work during their parental leave or any career break, and policies which prohibit the undertaking of work during these periods should not be adopted.

12. The written policy should set out how chambers will assist members to keep in touch with chambers and with practice developments during any period of leave and return to practice.

13. Invitations to training, social events and other information about chambers business should be given to members on parental leave or a career break. Chambers should also, where appropriate,

consult them in relation to major chambers decisions.

Leave for carers of disabled dependents

14. It is recommended that, on request, chambers offer members who are the primary carers of a disabled dependent a period of leave to care for that dependent. Such a period of leave should be free of rent. The length of such leave will be a matter for individual chambers to decide and will depend on the specific need of the member concerned.

Reviewing policies and procedures

15. Chambers' parental leave policies and their application should be monitored and reviewed by the Equality and Diversity Officer. Concerns about the policies or their operation may be raised informally or under the chambers grievance procedures.

Model Parental Leave policy

16. A model chambers parental leave policy is set out at section 13.

17. ### Other Sources of Information

- Bar Council Equality and Diversity Helpline – 020 7611 1310.
- Information about tax credits and child benefits can be accessed via the HM Revenue & Customs website[37]
- Information about 'keeping in touch days' can be accessed on the Department for Work and Pensionswebsite.[38]
- Information regarding claiming statutory maternity allowance can be found on the Gov. uk website.[39]

37. www.hmrc.gov.uk
38. www.dwp.gov.uk
39. www.gov.uk/maternity-allowance

SECTION 11

Flexible and part-time working and career breaks

Legal requirements

1. Employees of chambers are covered by the legislation relating to entitlement to request flexible working arrangements. An explanation of this legislation can be found on the relevant part of the Gov.uk website.[40] However most barristers are self-employed and so are not covered by these provisions. It may be necessary for chambers to facilitate flexible working for disabled persons as a reasonable adjustment, depending on the circumstances.

Regulatory Requirements

2. rC110(3) I requires that chambers has a flexible working policy which covers the right of a member of chambers or employee to take a career break, to work part-time, to work flexible hours or to work from home so as to enable them to manage their family responsibilities or disability without giving up work.

Guidance

Advantages of flexible working arrangements

3. Some barristers find that the demands of full-time practice, or the financial burden of paying full-time fixed contributions but receiving fees from part-time practice, make continued practice at the Bar unviable. Flexible working arrangements may enable these barristers to remain in practice. There is an equality and diversity aspect to this, because a disproportionately high number of women leave the Bar, often after having children and during the years when their children are still young. This is a loss to the Bar and to chambers which in many cases might be avoided if flexible working arrangements had been made available.

Guidance on developing a policy

4. The self-employed Bar is ideally suited to flexible working. Solicitors and lay clients do not expect barristers to be available at all times, not least because of their commitments to other clients, for example during trials a long distance from chambers, or due to part-time judicial appointments, writing commitments, or academic or political appointments. Remote access to chambers computers and telephone networks means that it is now common for barristers to work from home, often for reasons of convenience unconnected with childcare or other domestic responsibilities.

Example

A barrister agrees with chambers that while his children are young, he will go to court, do conferences, and attend chambers meetings and marketing events only every other week, with the alternate week being spent doing paperwork at home. He is able to make other arrangements in special circumstances, or for trials which last longer than a week but finds that this is necessary only rarely. He agrees to move to a smaller room in chambers in return for a reduced fixed contribution to chambers expenses. These flexible working arrangements enable him to take his children to school and collect them, and to be at home with them before and after school hours. When they are older and can manage without him, he returns to full-time practice, moves back to a larger room, and increases his financial contribution to chambers.

5. In developing a written policy, chambers should also consider whether the way in which financial contributions to chambers are structured has the effect of preventing members of chambers from adopting these or other flexible working arrangements.

6. For example, financial contributions may be structured in a particular way to achieve certain aims, such as to ensure that barristers' contributions fairly reflect the space they occupy in chambers. These are legitimate aims, but chambers should also consider whether alternative arrangements can be adopted to achieve the same aims in a more proportionate manner.

40. www.gov.uk

7. Members of chambers with flexible working arrangements should be given opportunities to take part in all aspects of chambers activities, including continuing professional development, marketing and social activities. The nature of individual members' flexible working arrangements should be taken into account when these activities are being arranged.

Example

A barrister agrees with chambers that while her children are below school age, she will, so far as possible, work Monday to Thursday, and will not go to court, do conferences, or come into chambers on Fridays. Two other members of chambers, who already work a four-day week, work a different pattern of days. Chambers organises a buffet lunch for barristers and staff once every three months, always on a Friday. This is the only social event which the whole of chambers attends, except for an annual party. At the suggestion of the Equality and Diversity Officer, the Head of Chambers decides that the day of the week on which chambers' lunch takes place will rotate, so that all members of chambers working part-time are able to attend at least some of the lunches and maintain contact with other barristers, clerks and staff, without making special arrangements to come into work on a non-working day.

8. Individual practitioners should themselves be proactive in proposing and seeking to agree fair arrangements for rent and the use of chambers' resources, including accommodation, with their chambers. Rental arrangements should be agreed and understood before any period of flexible working commences.

SECTION 12

Providing services to disabled people

Legal requirements

1. It is unlawful to discriminate against someone, because of any protected characteristic, including disability, by refusing to provide a service, providing a lower standard of service, or offering a service on different terms than to other people.

2. The Equality Act 2010 contains the duty to make reasonable adjustments.[41] Reasonable adjustments need to be made where a practice, policy or procedure, or physical feature of premises, make it impossible or unreasonably difficult for a disabled person to make use of a service. The duty also includes making reasonable adjustments in the form of auxiliary aids or additional services (for example, the provision of information on audio tape, or of a sign language interpreter) to enable disabled persons to make use of the services provided.

3. It is unlawful for a barrister to pass on the costs of making reasonable adjustments to the individual or individuals for whom those adjustments are made.[42]

Regulatory Requirements

4. rC110(3)(m) requires that chambers has a reasonable adjustments policy aimed at supporting disabled clients, its workforce and others including temporary visitors to chambers.

Guidance

5. This guidance is intended to assist chambers, individual barristers and chambers staff including clerks, in providing services to disabled people in a manner which complies with equality legislation and the BSB Handbook by ensuring that chambers has a policy

   enabling disabled people to request, and chambers to consider, reasonable adjustments so as to comply with the legal requirements.

6. Chambers are encouraged to provide training in equality and diversity issues to all members of chambers, staff and pupils. This guidance is not a substitute for training. Disability discrimination gives rise to particular issues in relation to service provision, and chambers should review its premises and its policies, practices and procedures periodically to ensure they comply with the law, and the Handbook. This review should extend to services which are provided to or on behalf of chambers, to the public or a section of the public, by external service providers such as IT consultants and web designers.

7. Further information and advice is available from the sources listed in the Directory. See also the guidance document 'Making Chambers Accessible', which is available from the Guidance section of the Bar Council website.[43]

Reasonable adjustments

8. The Equality Act 2010[44] imposes a duty on a barrister to make reasonable adjustments. The legal duty to make reasonable adjustments comprises three requirements to make reasonable adjustments:

   a) Where there is a provision, criterion or practice which puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled
   b) Where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled
   c) Where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled.

   Where the provision of information is a requirement under a) and c) it must be provided in an accessible format.

9. A failure to comply with the duty to make reasonable adjustments is discrimination against the disabled person.

10. Further information on the types of reasonable adjustment that can be made can be found on the Equality and Human Rights Commission (EHRC) website[45] (see specifically the Equality and Human Rights Commission guide, "Examples of

41. S.20 Equality Act 2010
42. S.20 (7) Equality Act 2010
43. www.barcouncil.org.uk/media/43938/disability_access_making_chambers_accessible.pdf
44. S.47 Equality Act 2010
45. www.equalityhumanrights.com

Reasonable Adjustments").

Example
A solicitor tells a clerk that a client who will be coming to chambers is visually impaired. The clerk asks the solicitor, who has visited chambers before, to discuss with the client whether any adjustments need to be made. After discussion with the solicitor, the client suggests that the conference should start mid-morning so that she can travel on the underground after the rush hour, asks for drinking water to be made available for her dog together with somewhere for it to relieve itself, and asks for any documents which the barrister is preparing for discussion at the conference to be made available to her electronically so that she can adjust the size of the text on her computer.

11. In the context of the provision of legal services, the purpose of reasonable adjustments is to provide access to the service for a disabled client as close as it is reasonably possible to get to the standard normally offered to other clients who are not disabled.

Example
Chambers' premises are on the third floor of a listed building in the Temple. In order to ensure that it can offer services to disabled clients whose mobility is impaired, chambers agrees with the occupants of the ground floor premises the use of conference rooms,

waiting and toilet facilities as required, in return for a fee. Chambers does not charge disabled clients an additional fee to cover the cost of using the ground floor premises, but absorbs the cost within its general overheads.

12. If chambers makes an additional service available to clients for which there is normally a charge it will have to consider whether that additional service is a reasonable adjustment in relation to the disabled client. If it is a reasonable adjustment, the cost cannot be passed on to the disabled client.

Example
A sole practitioner conducts conferences in chambers or at the solicitor's office. If she conducts a conference at the solicitor's office, she charges for the cost of travel. The barrister has to conduct the conference at the solicitor's office because chambers premises are inaccessible for the mobility impaired client. The barrister does not pass on to the client the cost of making this reasonable adjustment.

13. Chambers should state on its website and in any publicity material that reasonable adjustments will be made and should identify the person or persons to whom requests should be made.

14. The Equality and Human Rights Commission website notes that: "When deciding whether an adjustment is reasonable, service providers can consider issues such as the cost of the adjustment, the practicality of making it, health and safety factors, the size of the organisation, and whether it will achieve the desired effec In considering what is reasonable, you may consider factors such as your organisation's financial resources: generally, more is expected of larger organisations."

15. The law requires the removal of barriers to accessing a service but does not require a fundamental change in the nature of the service provided. For example if a barrister does not do work on a conditional fee basis, the barrister is not required to accept a case on a conditional fee basis for a disabled person. Making this adjustment would fundamentally alter the nature of the services offered by the barrister.

Reasonable Adjustments Policy Requirement

16. The regulations require that chambers develop a reasonable adjustments policy aimed at supporting disabled clients, barristers and visitors to chambers.

17. A sample reasonable adjustments policy is set out in section 13 of this document.

18. Reasonable adjustments policies should set out the aims of chambers in respect of the provision of reasonable adjustments, i.e. what chambers wishes to achieve through the implementation of

the policy.

19. Reasonable adjustment policies should also cover:

    a. The mechanisms in place for a person to ask for an adjustment to be made
    b. How decisions on reasonable adjustments will be made and by whom
    c. What mechanisms exist to ensure that the relevant factors are considered in reaching a decision as to whether any step is a reasonable adjustment.

SECTION 13

Model policies

MODEL PARENTAL LEAVE POLICY

1. This is a model parental and adoption leave policy for chambers. Chambers are encouraged to adapt this for their own use. For further information see section 9 on Parental Leave above.

Introduction

Definitions

2. "parental leave" refers to leave taken by the main carer of a child following birth or adoption. This could be the mother, father or adoptive parent of either sex.

Aims and purpose

3. It is the aim of this policy to:
   - Encourage members following parental leave to return to chambers and continue to build successful practices;
   - Prevent discrimination on grounds of parental responsibility;
   - Encourage and support members taking time off following the birth or adoption of a child without suffering financial hardship;
   - Comply with the requirements of the Code of Conduct and accompanying Guidelines.

Circulation

4. This policy is circulated to all members, clerks and staff all of whom are required to:
   - Read and understand the policy; and
   - Understand their role in relation to the policy.

Review of this Policy

5. This policy is reviewed by chambers Equality and Diversity Officer every two years.

Parental Leave

6. Every member of chambers is entitled to return to chambers within a period of one year after giving birth or adopting a child for whom they are the primary carer.

7. (FLAT RATE) A member of chambers taking a period of parental leave is entitled to six months' free of chambers rent and expenses.[46]

8. Members of chambers are required to notify chambers management and clerks of their intention to take a period of parental or adoption leave not less than [x months] before the commencement of the period of leave indicating the estimated commencement date and likely date of return.

9. If a member wishes to take more than six months' rent free parental or adoption leave s/he should notify chambers' management and clerks [x weeks] before the end of that period stating the estimated date on which s/he intends to return.

10. If a member wishes to take leave for a period longer than 12 months, this should be arranged with chambers management.

11. If a member is absent from chambers for more than 12 months without agreeing an extension with chambers management, her/his automatic right to return to chambers ceases unless such absence is due to consecutive births.[47]

12. Where membership ceases by virtue of the provisions in paragraph 11, a member can re-apply to chambers in the usual way.

Arrangements During Leave[48]

13. A member on parental or adoption leave is encouraged to maintain contact with chambers.

14. Head of Chambers will ensure that the member is:
   - Offered opportunities to do appropriate work if this is requested and;
   - Invited to training events, social occasions, marketing events and chambers meetings and;
   - Is consulted on any significant issues affecting the practice of chambers and;
   - Receives assistance with the re-establishment of their practice on return to work, including (where requested) the arrangement of a "practice meeting" with the relevant clerk within two weeks before the member returns to work.

46. The six month period free of rent and expenses or free of the levy on receipts does not extend to mortgage repayments, one off investments or clerks' fees.

47. Chambers are encouraged to offer a longer period than the year required by the Handbook.

48. For further guidance and information please see the Bar Council maternity leave and career break checklist on the Bar Council website: www.barcouncil.org.uk/for-the-bar/professional-practice-and-ethics/equality-and-diversity-guidance/maternitypaternityparental-leave-policies-things-to-think-about

Undertaking work during leave

15. (FLAT RATE) Informal working arrangements during a period of parental leave do not affect a member's entitlement to the six month period free of rent,provided that the Head of Chambers during a period of parental leave do not affect a member's entitlement to the six month period free of rent, provided that the Head of Chambers is kept informed of the arrangements by the member of chambers and is satisfied that the level of work being undertaken does not constitute a return to practice.

Return from Leave

16. It is the policy of [insert name of chambers] to enable parents to work reduced hours on return from a period of parental or adoption leave. This should be discussed with chambers' management and clerks.

Complaints

17. Any member who wishes to make a complaint regarding a breach of this policy should in the first instance contact chambers' Equality and Diversity Officer.

Contact

18. Chambers Equality and Diversity Officer is [insert name] [insert contact number].

19. [Insert name] is the point of contact for all queries regarding this policy.

MODEL REASONABLE ADJUSTMENTS POLICY

1. This is a model reasonable adjustments policy for chambers. Chambers are encouraged to adapt this for their own use. For further information please see section 11 on providing services to disabled people above.

Aim and remit of policy

2. Aim: this section should set out what chambers wishes to achieve through the development of this policy.

3. [Name of chambers] is committed to making reasonable adjustments in order to remove or reduce substantial disadvantage for disabled people working with chambers or receiving legal services. This policy covers all employees of chambers, barristers, clerks, pupils, mini-pupils and visitors to chambers.

Circulation

4. This policy is circulated to all members, staff, pupils, clerks and those who are required to read and understand it.

Definition of disability

5. For the purposes of this policy the definition of disability follows that set out in the Equality Act 2010 s.6. A person is therefore disabled if s/he has a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities. "Substantial" means more than minor or trivial and "long term" means 12 months or more".

Types of reasonable adjustment

6. This policy does not provide an exhaustive list of the reasonable adjustments that chambers will make for staff, barristers, pupils or visitors however the following types of adjustment that may be made are listed below:

   a. Provision of information in alternative formats (e.g. large print, Braille etc)
   b. Paid leave for disabled employees of chambers
   c. Provision of auxiliary aids e.g. induction loops
   d. Provision of accessible conference room facilities
   e. Provision of a reader or interpreter

Staff, barristers and others in chambers

7. Staff or barristers with specific requirements should make requests to [insert name and job title] for reasonable adjustment decisions. All requests for reasonable adjustments will be considered on a case by case basis with the advice and assistance of chambers' Equality and Diversity Officer and where it is not possible to make the adjustment requested [Name of chambers] will discuss viable alternatives with the applicant.

8. Head of Chambers is responsible for considering whether or not disabled staff, barristers or pupils require assistance during an emergency evacuation and if so whether or not a personal emergency evacuation plan is required for the individual/s concerned. If so, the plan will be developed in partnership with the individual concerned in order to ensure that adjustments to the emergency evacuation procedure may be made.

Visitors to chambers

9. Barristers are responsible for considering reasonable adjustment requests for their visitors. They are also responsible for anticipating any likely reasonable adjustments that will need to be made for visitors whom they know to be disabled and are likely to require assistance. Visitor requests for specific reasonable adjustments may be made by contacting [insert name and contact details].

Cost of making reasonable adjustments

10. In no circumstances will [Name of chambers] pass on the cost of a reasonable adjustment to a disabled person.

Monitoring and review

11. This policy is reviewed by chambers' Equality and Diversity Officer every two years. The date of the last review was [insert date].

MODEL DIVERSITY DATA POLICY

1. This is the Data Diversity Policy for [Name]. This policy is effective as of [insert date].

2. The name of the registered data controller for [Name] is [insert name] and the data controller's registration number on the Data Protection register is [insert number].

3. The name of the Diversity Data Officer is [insert name].

Collection of Diversity Data

4. Members of chambers' workforce are given the opportunity to provide their Diversity Data for collection in accordance with the Bar Standards Board's requirements. The Diversity Data Officer is responsible for arranging and supervising the collection of Diversity Data.

Why Diversity Data is collected

5. Individuals have the opportunity to provide their Diversity Data in order for [Name] to publish an anonymous summary of such data. This provides transparency concerning recruiting and employment activities across chambers and analysis of diversity data encourages a strong, diverse and effective legal profession.

   Please note: You are not obliged to provide your Diversity Data. You are free to provide all, some or none of your Diversity Data.

How Diversity Data is collected

6. Diversity Data will be collected through [insert details i.e. completing an online form/ survey or completing a hard copy form plus details of how the individual returns the completed form to the Diversity Data Officer if relevant].

7. You will be provided with a copy of the [online] form [by email], together with a copy of the consent form which you must complete if you wish to provide your Diversity Data.

Keeping Diversity Data secure

8. All Diversity Data that is collected from individuals will be kept securely. [Name] shall put the following security measures in place to protect Diversity Data:

   [Set out the measures that will be used to protect the Diversity Data against unlawful and unauthorised disclosure or access and the way in which it will be deleted]

9. [Name] will not share Diversity Data with any third parties, save as set out in paragraph [XX] above.

10. Should you access or disclose Diversity Data accidentally or intentionally when you are not authorised to do so, you must notify the Diversity Data Officer immediately.

Anonymising Diversity Data

11. [Name] is required to anonymise Diversity Data before publishing it in summary form. We will securely anonymise Diversity Data through [insert details of how anonymisation is achieved and categories against which data will be summarised].

Publication of the anonymised summary of Diversity Data

12. [Name] is required to anonymise Diversity Data Where there are fewer than 10 (ten) individuals within each published category who identify through the questionnaire with the same diversity characteristic (for example, 4 (four) individuals with a job role at the same level of seniority identify themselves as disabled), [Name] will not publish the anonymous data relating to those individuals unless it has their informed consent to do so].

13. Where there are fewer than 10 (ten) individuals within each published category who identify through the questionnaire with the same diversity characteristic (for example, 4 (four) individuals with a job role at the same level of seniority identify themselves as disabled), [Name] will not publish the anonymous data relating to those individuals unless it has their informed consent to do so.

Destruction of Diversity Data

14. [Name] will securely destroy the Diversity Data collected promptly after the Data has been anonymised and in any event within 3 (three) months following the date of collection. Secure destruction means that as far as possible we shall not hold the Diversity Data in any way where it is possible to identify an individual. In practice [insert details of how secure destruction will be achieved].

15. Anonymised data will be kept for 12 months before being destroyed as above.

Questions or complaints

16. You have a right to withdraw your consent or object to the use of your Diversity Data at any time.

17. Where your data has already provided and you wish to withdraw your consent to its use, please notify the Diversity Data Officer in writing [insert contact details]. He/she will promptly to delete or destroy any Diversity Data which includes your personal data and will confirm to you that this step has been taken within 21 days of receiving notification from you.

18. Where the anonymised data has been published in summary form, the Diversity Data Officer will not extract your personal data from the published summary unless it is likely that continued publication could cause you or someone else substantial damage or distress. In such circumstances, the Diversity Data Officer will consider the reasons you have put forward and shall respond within 21 days from the date you notify him/her of your belief to let you know whether he/she has determined that the continued publication of the data is justified and, if not, to confirm the action taken to extract your data from the published summary and to delete or destroy any copies.

19. Should you have any questions or complaints about this Diversity Data Policy, please contact the Diversity Data Officer on [insert contact details].

MODEL NOTIFICATION AND CONSENT FORM FOR DIVERSITY DATA PROVISION

1. [Name] is required by the Bar Standards Board to give you the opportunity to submit diversity data so that such data may be published in anonymised summary form.

   You are under no obligation to provide diversity data and if you submit diversity data, you do so voluntarily.

2. Any diversity data that you submit will be processed for the purposes of publishing an anonymous summary [on [Name] website or made available on request to members of the public in electronic or hard copy form].

3. The anonymous summary will categorise each diversity characteristic against job status and role, in a manner which reflects seniority within [Name].

4. If you would like further information about the collection and use of diversity data, please refer to our Diversity Data Policy available here [insert link or similar]. You have a right to object to the use of your diversity data at any time, or withdraw your consent to its use, by contacting the Diversity Data Officer at [insert details].

Consent Questions

1. I explicitly consent to the processing and publication of my data as set out in this form and (name) diversity data policy.
   Yes/No
2. I explicitly consent to the publication of my data in anonymous form even if there are fewer than 10 individuals identified against one or more of the characteristics. I understand that this may result in identification.
   Yes/No

MODEL EQUALITY ACTION PLAN

Chambers must consider what actions it should take to ensure that the principles of equality and diversity are embedded into the framework of its day-to-day work and to prevent unlawful discrimination taking place. The actions that are needed will naturally differ depending on chambers' individual circumstances. The actions contained in this sample plan are for illustrative purposes only. Chambers must analyse all relevant data in order to develop appropriate evidence based actions of its own.

Date:
Created/updated by: (insert name & job role e.g. Chambers Equality and Diversity Officer)

Action number	Action/Activity	Evidence base	Deadline	Person/s responsible	Progress as at (insert date)
1	Disseminate Bar Council Fair Recruitment Guide to all members of chambers	Only 4 members of chambers have read the guide which creates difficulty setting up selection panels.	September 20XX	Chambers' EDO	Completed. All members provided with copy of FRG by email on XX August 20XX.
2	Provide confirmation in writing to Chambers' EDO that private study of Bar Council Fair Recruitment Guide has been undertaken	" "	December 20XX	All members of chambers	In progress – awaiting confirmation from 7 members. Chaser/ reminder email sent on XX November.
3	Develop unassigned work allocation "rota" for all pupils	November 20XX work allocation monitoring review indicates female pupils are not receiving as many cases as male pupils.	December 20XX	Chambers' EDO	Completed. Rota developed and training on its use delivered on XX November.
4	Set up diversity training session/s for all clerks.	Work allocation monitoring review indicates female pupils are receiving less cases than male pupils.	January 20XX	Head of Chambers with assistance from Chambers' EDO	In progress. Suitable course sourced from Bar Council Equality team. Training will be delivered on XX Dec 20XX.
5	Disseminate email from Head of Chambers/ Management Committee explaining the reasons for the collection of diversity data and encouraging members of chambers' workforce to provide it.	Latest workforce monitoring round indicates 50% of chambers' workforce did not provide diversity data.	October 20XX	Head of Chambers with assistance from Chambers' DDO.	Completed – email sent on XX October 20XX.
6	Ensure BSB is provided with the name of the new chambers DDO	Chambers are required to ensure that the BSB is provided with the name of the DDO	May 20XX	Chambers' DDO	Completed – DDO sent email to BSB equality team on XX May 20XX

SECTION 14

Directory

This section lists organisations and information resources in the field of equality and diversity.
Please email the Bar Standards Board Policy Officer with any corrections, updates or suggestions for additions
equality@barcouncil.org.uk

Bar Council Equality and Diversity helpline
Email: equality@barcouncil.org.uk
Confidential helpline: 020 7611 1310
Open to practising barristers, pupils and law students

Bar Standards Board Handbook
Website: www.barstandardsboard.org.uk

ACAS
Website: www.acas.org.uk
Information and advice on employment and discrimination law

Action on Hearing Loss (formerly RNID)
www.actiononhearingloss.org.uk

The Association of Muslim Lawyers
Website: www.aml.org.uk
Email: aml@aml.org.uk

The Association of Women Barristers
Website: www.womenbarristers.co.uk
Email: Via website

Bar Lesbian and Gay Group
Website: www.blagg.org
Email: info@blagg.org

Deaf Lawyers UK
Website: www.deaflawyers.org.uk

Discrimination Law Association
Website: www.discriminationlaw.org.uk
Telephone: 0845 478 6375

Equality and Human Rights Commission
Website: www.equalityhumanrights.com
Includes the websites of the former Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission
Email: info@equalityhumanrights.com
The Gender Trust
Website: www.gendertrust.org.uk
A UK charity providing support and advice to adults who are Transsexual, Gender Dysphoric, Transgender (i.e. those who seek to adjust their lives to live as women or men, or come to terms with their situation despite their genetic background), or those who's lives are affected by gender identity issues.
Helpline: 0845 231 0505

Jobcentre Plus
Website: https://www.gov.uk/contact-jobcentre-plus
Provides funding for adjustments for disabled people in the workplace through the 'Access to Work' Scheme. Contact the Disability Employment Advisor in the local Jobcentre for information on how to apply.

LawCare
Website: www.lawcare.org.uk
Helpline: 0800 018 4299
An advisory and support service to help lawyers, their staff and their immediate families to deal with health problems such as depression and addiction, and related emotional difficulties.

Lawyers' Christian Fellowship
Website: www.lawcf.org
Email: admin@lawcf.org

MIND – National Association for Mental Health
Website: www.mind.org.uk
This is a mental health charity which works to support people with mental health problems and their carers. Provide advice on employment matters.

Royal National Institute of Blind People
Website: www.rnib.org.uk
Includes detailed information about website accessibility
Email: helpline@rnib.org.uk

Telephone: 0303 123 9999

Society of Asian Lawyers
Website: www.societyofasianlawyers.org
Email: info@societyofasianlawyers.com

Stonewall
Website: www.stonewall.org.uk
A campaigning and advisory charity working to achieve equality and justice for lesbians, gay men and bisexual people.

The United Kingdom Association of Jewish Lawyers and Jurists
Website: www.jewishlawyers.co.uk
Telephone: 020 8958 6110

Bar Standards Board
289-293 High Holborn
London
WC1V 7HZ

Tel: 020 7611 1444
Fax: 020 7831 9217
contactus@barstandardsboard.org.uk
www.barstandardsboard.org.uk
Twitter: https://twitter.com/barstandards

BAR STANDARDS BOARD

REGULATING BARRISTERS