

**EQUALITY AND
DIVERSITY
CODE
FOR THE
BAR**

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FOREWORD

The Bar of England and Wales continues to lead the way among professions in its practical approach to equality and diversity within the Bar. This concern with fair treatment and respect for individual dignity is especially important in a profession whose own task is to uphold people's rights without fear or favour.

This edition of the Equality Code has been updated to take into account increasing awareness in discrimination issues and developing law, including disability legislation. Although it cannot provide comprehensive guidance to the law, it does provide practical guidance on implementation of good equal opportunities practices in areas where equality and diversity issues are most likely to arise. It places greater emphasis on:

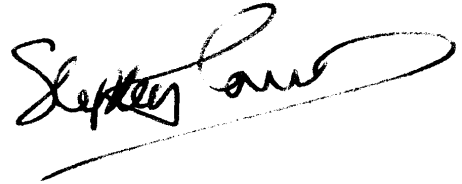
- practice development for pupils and junior tenants
- access to good quality work
- flexible working, including maternity and paternity leave

For those accessing the document electronically, there are hyperlinks to relevant legal provisions, codes of practice, model policies and guidance.

The profession was consulted about the first draft, and the final version incorporates many of the suggestions received. The Bar Council unanimously approved the Equality Code at its meeting on 17 July 2004.

The Bar Council's Equality and Diversity Advisers are willing to provide advice and guidance, and can provide information about planned training courses and briefings.

This Code is the result of much effort by experts in the field. We urge you to draw upon that expertise.

Handwritten signature of Lord Goldsmith in black ink.Handwritten signature of Stephen Irwin in black ink.

THE RT HON LORD
GOLDSMITH QC
ATTORNEY GENERAL

STEPHEN IRWIN QC
CHAIRMAN
GENERAL COUNCIL OF
THE BAR

INTRODUCTION

The purpose of the Code

This new Equality and Diversity Code is designed to assist barristers and their employees to apply good equal opportunities practice in the development and running of Chambers. The advice is primarily for barristers in self-employed practice as employed barristers will be bound by their individual company/organisation's policies and rules for implementation. All barristers are required to comply with the broad obligations not to discriminate, as set out in paragraphs 305 and 404 of the Code of Conduct and in the anti-discrimination statutes. It is intended to be a practical guide rather than a legal handbook but seeks to reflect and give effect to the requirements of the law.

Why does equality of opportunity matter?

Equality of opportunity is **fair, commercially advantageous, necessary for compliance with non-discrimination law and constitutionally important.**

Barristers advise and represent clients from an increasingly diverse range of backgrounds. They remain the largest pool for recruitment to the judiciary. It is in the best interests of both the public and the Bar that those of the highest ability and talent are attracted to the profession. Recent statistics for entry to the Bar are encouraging but retention remains an issue of concern. Cultures and practices which may deter those of high ability from remaining within the profession or from achieving their full potential must be identified and, where possible eliminated. Public confidence and support for the Bar can only be enhanced by systems which are seen as open and fair.

Barristers need to be able to recognise their own prejudices and to be aware of the assumptions which they make in evaluating others. They must learn how to ensure that prejudices and assumptions do not influence their treatment of others in the work context. Diversity training will assist barristers in understanding the cultures and sensitivities of others. Systems, such as fair recruitment processes, policies on flexible working and monitoring,

will help to ensure that working practices really are achieving equality. Accreditation through schemes such as the Legal Services Commission's Quality Mark now require that good equal opportunities practices are applied.

The application of good equal opportunities practices will minimise the risk of breaches of discrimination law for which awards may now be substantial. But the commercial advantages go further. They entail the retention of an excellent pool of talent. Barristers in the early stages of their professional lives may be supported in their work by rent concessions and training. If they then leave Chambers because, for example, childcare commitments limit their earning capacity for a few years and a period of flexible working cannot be accommodated, their value is lost. They may be potential major contributors to Chambers whose value is lost by short-term considerations.

The Bar has a constitutional role in ensuring the independence of advocates before the Courts and in order to maintain confidence in that role, its own practices must be and be seen to be fair.

The Bar Council has now adopted a policy of "mainstreaming" equal opportunities and Chambers are encouraged to do the same. This means that the furtherance of equal opportunity objectives and the potential for discrimination should be considered in relation to all policies, practices and decisions where equal opportunities issues may arise: for example, not just recruitment but also matters such as distribution of work, allocation of rooms, fees, the location and timing of meetings and Chambers entertaining.

Using the Code

The Code begins with a guide in Section 1 to the key areas (known as "Action Areas") where good equal opportunities practice should be implemented. This is where practical guidance may be found, on the key areas of recruitment, maternity and fair access to work. Section 1 also includes a guide to the new statutory provisions on service provision to disabled clients.

Section 2 outlines the legal and regulatory framework which underpins the requirement not to discriminate. The duty not to discriminate is to be found not only in statute and regulations but also in the Bar's Code of Conduct. The key concepts of anti-

discrimination law are summarised and some common misconceptions are clarified.

In each Section, the reader will find Links to regulatory provisions, statutory Codes of Practice, model policies and guidance on good practice. For those reading the Code in its paper version rather than electronically, Section 3 contains Annexes with further guidance on good equal opportunities practice, such as the Bar Council Maternity, Paternity and Flexible Working Policy guidance on Monitoring and on the role of an Equal Opportunities Officer in chambers. The Equality and Diversity Advisers of the Bar Council are available to provide further assistance. References to “Heads of Chambers” in the text include all management structures with overall responsibility for running chambers.

SECTION 1: ACTION AREAS:

A. RECRUITMENT: PUPILS AND TENANTS

General Guidance

- 1.1 The same broad principles apply to the recruitment of pupils, starter tenants, established practitioners and staff. Discrimination by barristers on the ground of sex, race, disability, sexual orientation and religion or belief in recruitment is unlawful. Discrimination on the ground of age is professional misconduct.

[LINK TO CRE, EOC, DRC & ACAS CODES OF PRACTICE- LIST OF WEBSITE ADDRESSES](#)

[LINK TO GUIDANCE ON ESSENTIAL TECHNIQUES IN SELECTION](#)

[LINK TO GUIDANCE ON AVOIDANCE OF AGE DISCRIMINATION](#)

Advertisement

- 1.2 Vacancies should be advertised. A failure to advertise vacancies for pupils or tenants places Chambers and individual barristers at risk of allegations of indirect discrimination. It is good practice to include in advertisements:

- encouragement of applications from groups which are under-represented in Chambers;
- a statement of compliance with the Equality and Diversity Code;
- a statement indicating preparedness to make reasonable adjustments for disabled candidates.

Where Chambers use agencies or head hunters they should ensure that Chamber's equality policy is included in the instructions given to the agency

Application Forms

- 1.3 An application form is generally preferable to curriculum vitae. An application form enables the assessment of candidates to be made on a clearly defined comparative basis by reference to specific qualities which are relevant to Chambers' selection criteria.

Chambers are reminded that reasonable adjustments may need to be made for disabled candidates at the application stage of the recruitment process when, for example, application forms may have to be provided in a particular format.

LINK TO GUIDANCE ON REASONABLE ADJUSTMENTS IN
PUPILLAGE AND TENANCY RECRUITMENT AND EXAMPLES OF
REASONABLE ADJUSTMENTS

Selection Criteria

- 1.4 Candidates for pupillage or tenancy should be selected using selection criteria. Selection criteria should be objective and should relate to the work to be done.

- selection criteria enable Chambers to focus on the qualities which they require from the successful candidate.
- they reduce the opportunity for decisions to be influenced by stereotyping or unwitting prejudice.
- selection criteria may be designed so that a higher score is attributed to criteria to which greater importance is attached.
- chambers should avoid criteria that are subjective, such as personality-based attributes or behavioural attributes that cannot fairly be tested at interview.
- it is good practice to provide candidates with selection criteria in advance of the interview.

They promote a consistent and objective approach to candidates by selectors.

Short Listing

- 1.5 Short listing should be carried out by more than one person and by reference to relevant selection criteria which should be determined in advance of the recruitment process. It is good practice to draft a job or post description and a person specification to assist in identifying the relevant criteria and enable application forms to be drafted in a way which allows candidates to address the criteria. Where shortlisters cannot agree, it may be necessary for a committee to moderate short-listing decisions.

Selection Committees

- 1.6 All recruitment decisions Chambers make, except for sole practices, should be made by a number of selectors, except in sole practices. Selection committees should, so far as possible, include persons of different age, gender and social, racial or cultural background. They should not include any relative or close friend of the candidates. No candidate should feel that he or she is so remote from the interviewing committee as to be denied a fair prospect of success.
- 1.7 Where final decisions as to recruitment are made by Chambers or designated members of Chambers rather than the selection committee, no single member of Chambers should be permitted to veto a decision and any challenge to a recommendation of the selection committee should be by reference to the selection criteria and on grounds which are substantiated.

Training

- 1.8 Members of selection committees should be familiar with this Code and the applicable procedures and selection criteria. It is recommended that at least one member of each selection committee should be trained in fair selection methods.

Interviews

- 1.9 Interviews should be planned in advance and structured so that each candidate may demonstrate his or her abilities and qualities by reference to each selection criterion. Chambers should ensure that any reasonable adjustment required for a disabled candidate has been made so that disabled candidates are not disadvantaged at interview.
- 1.10 Interviews should be of sufficient length to enable informed decisions to be made and to minimise the potential prejudices involved in “gut feeling”.
- 1.11 It is not essential to ask each candidate identical questions, but a planned sequence of topics is recommended.
- 1.12 Irrelevant questions, such as personal questions in relation to family and personal background should be avoided. However, disabled candidates should be asked what, if any, adjustments may be needed to enable the candidate to practise as a barrister.
- 1.13 Selectors should score candidates individually on an agreed scale and should then compare scores with others on the panel so as to seek to reach a consensus. Scores should not be adjusted to reflect personal preference.
- 1.14 Standard exercises either in written form or by way of oral presentation may be a useful aid to arriving at objective assessments of candidates. In relation to pupils and starter tenants, such exercises should be designed in such a way that any area of law covered is one which should be equally familiar to all candidates. Alternatively, a topic may be chosen which requires no prior specialist legal knowledge but is designed to test analytical or advocacy skills.

Record-Keeping

- 1.15 Candidates who have been rejected may want an explanation for their rejection. If good records are kept, reasons for rejection are generally easily explained in the event of a request or even legal challenge. If explanations

for rejection can be given, this should enhance confidence in the recruitment system.

Monitoring and Review

- 1.16 Candidates should be asked to complete monitoring forms so as to enable Chambers to review their performance by reference to reliable statistics. Monitoring enables Chambers to self-check. It may be that prejudices and attitudes of which selectors are not even conscious are influencing decisions. Monitoring enables these possibilities to be recognised and examined. Where there are significant discrepancies between proportions of applicants from a particular group and proportions of successful candidates from a particular group, recruitment practices may need to be reviewed with a view to redressing observed discrepancies and to achieving diversity in Chambers. If there are no such discrepancies, statistics may support the objectivity of a particular process in the event of a challenge.
- 1.17 All documents relating to exercises should be retained for two years and statistics should be prepared by reference to gender, race, disability and age of the number of persons applying, being short-listed and being recruited.

[LINK TO GUIDANCE ON MONITORING](#)

[LINK TO RELEVANT BENCHMARK DATA MAY BE FOUND ON THE BAR COUNCIL WEBSITE, THE EDUCATION AND TRAINING DEPARTMENT WEBSITE AND THE OFFICE FOR NATIONAL STATISTICS.](#)

Recruitment of Pupils

- 1.18 This guidance is in addition to the matters set out at paragraphs 1.1 to 1.7 above.

Pupillage Policy

- 1.19 Chambers should have a pupillage policy which includes a pupillage selection procedure. The pupillage selection procedure should be made available to candidates for pupillage and should be reviewed regularly.

Advertising Pupillages

- 1.20 Pupillages must be advertised on a website designated by the Bar Council, save in the exceptional circumstances set out in paragraph 5 of the Pupillage Funding and Advertising Requirements 2003 in Annexe R to the Code of Conduct. Subject to those exceptions, all pupillages must be advertised including supplementary or late vacancies and vacancies for candidates who intend to practise outside the UK (see para. 404.2 (c) of the Code of Conduct).

LINK TO THE CODE OF CONDUCT: BAR COUNCIL WEBSITE

Private Arrangements

- 1.21 Private arrangements to take pupils should not be made, save where the requirement to advertise is disapplied or waived pursuant to paragraph 5 of the Pupillage Funding and Advertising Requirements 2003 (see para. 1.20 above). Private arrangements are contrary to good equal opportunities practice and the Bar Council will not register pupillages by private arrangement. They breach the requirement in the Code of Conduct that pupillages must be advertised.

References

- 1.22 Where references are sought, a standard form should be used. Alternatively, referees should be directed as to the selection criteria being applied and the type of information which is sought from them.

Recruitment of Starter Tenants

- 1.23 This section is in addition to paragraphs 1.1 to 1.17 above.
- 1.24 Every Chambers, which recruits starter tenants, should have a policy in relation to the recruitment of starter tenants. The policy should be made available to members of Chambers and to pupils when they begin their pupillage. Pupils should be informed as to when their Chambers will identify any vacancies for starter tenants and how pupils will be assessed for any vacancies identified.

- 1.25 Chambers should identify, preferably at a specified time each year, how many starter tenants they wish to recruit. Chambers should, so far as possible with the assistance of the senior clerk, practice director or similar, determine the quantity and the nature of work available, or potentially available, for starter tenants.
- 1.26 Starter tenancies should be advertised where Chambers do not recruit from among their own pupils.
- 1.27 Many Chambers prefer to consider their own pupils for starter tenancies and some recruit all pupils with a view to a tenancy. This is not objectionable provided that pupillage selection procedures have been fair and non-discriminatory.
- 1.28 Whichever approach is taken, the following guidance is recommended:
- all candidates for starter tenancies should be assessed according to an objective and transparent system of assessment, which may include an interview, and against the same criteria;
 - assessments in relation to the candidates' demonstrated abilities and potential should be obtained from a wide range of sources by reference to relevant criteria;
 - the sources will include records of any formal assessments of pupils conducted during their pupillage, assessments by barristers for whom the candidates have carried out work, including but not confined, to pupil supervisors, and feedback from instructing solicitors by whom candidates have been instructed;
 - all comments provided in relation to candidates should be considered solely by reference to the agreed selection criteria.
- 1.29 Chambers should aim to identify ability and potential with objectivity, filtering out so far as possible the subjective loyalties and favouritisms which may be felt by individual members of Chambers (in particular pupil supervisors) to particular pupils and the converse, such as subjective

dislikes based on personal prejudice, whether conscious or unwitting.

- 1.30 Candidates for starter tenancies should be assessed by a committee of at least three members of Chambers, wherever possible excluding pupil supervisors who have supervised any of the candidates.
- 1.31 The decision to offer a starter tenancy should be made either by the committee as a whole or, on recommendation by the committee, by all or a substantial proportion of the members of Chambers.

Recruitment of Established Practitioners

- 1.32 Reference is made to the general guidance at paragraphs 1.1 to 1.17 above.
- 1.33 Vacancies for established practitioners should be advertised.
- 1.34 Exceptionally, Chambers may identify or may be approached by individuals or groups of established practitioners with particular experience or expertise in the field(s) in which the Chambers practises. In those circumstances, it may be legitimate to recruit without advertisement provided that such recruitment can be justified both in terms of Chambers' real business needs and in terms of the skills of those recruited. Chambers should be aware that recruitment of this nature may give rise to allegations of discrimination.

Mini-Pupillages

- 1.35 Where Chambers are unable to offer mini-pupillages to all who apply, Chambers should organise their mini-pupillages in such a way as to ensure equality of opportunity, so far as practicable, by applying objective criteria. Where mini-pupillages are assessed, the same or equivalent assessment materials should be provided to all candidates, who should be assessed by at least two assessors applying the same criteria.

B. FAIR ACCESS TO WORK

Allocation of Work in Chambers

- 1.36 The opportunities for barristers to develop a successful practice in their areas of interest are frequently affected by the range and quality of work on which they are instructed in the early stages of their careers and even in pupillage. Paragraph 404(2) of the Code of Conduct requires that Chambers take all reasonable steps to ensure that the affairs of Chambers are conducted in a manner which is fair and equitable for all barristers. This responsibility extends to the fair distribution of work amongst pupils and members of Chambers. Pupils and tenants are entitled to equality of opportunity in terms of being able to experience the full range of work and training undertaken by Chambers.
- 1.37 Pupils and junior tenants should be afforded the opportunity to develop their practices in a fair and equal manner. Discriminatory and stereotyped career assumptions may exist and procedures should be in place to ensure that patterns of instruction and briefing are transparent and open to scrutiny.
- 1.38 Chambers should have in place effective procedures for the monitoring of work allocation and for responding to (and rectifying where appropriate) complaints and concerns about work allocation. There should be procedures in place for ensuring the fair distribution of work, particularly un-named work and for providing support and guidance in respect of practice development and marketing.
- 1.39 The onus is on Chambers rather than on the individual pupil or barrister to ensure that there is fair access to work.
- 1.40 Chambers should ensure that its clerks use the clerks' room software to best advantage so that regular breakdowns of work are undertaken. Analysis should include the amount of work done, the type of work, fees earned and received and solicitors instructing. As a guideline, in respect of pupils and junior tenants, breakdowns should be produced at three monthly intervals. This information should be discussed with

the pupil or junior tenant as part of their individual practice development, as well as being used to monitor Chambers' internal work distribution procedures and instructing solicitors' briefing practices.

- 1.41 One or more members of Chambers or appropriate practice manager should be responsible for overseeing the monitoring of work and should meet with the Senior Clerk on a regular basis in order to compare and review the work distribution data so as to ensure that work is distributed in a manner which is fair.
- 1.42 Chambers should be particularly aware of issues relating to the distribution of any un-named work coming into Chambers, and the redistribution of work between members of Chambers and pupils and junior tenants. These in particular should be systematically monitored to ensure that any disparities in allocation are identified and rectified.
- 1.43 Chambers should use the work distribution data to ascertain whether any instructing organisations or solicitors exhibit briefing practices which tend to favour a particular group. Any such trend should be considered by a designated member or members of Chambers to see if there is any underlying discriminatory practice.
- 1.44 If briefing practices are identified which disadvantage a particular group (for example allocating sex and child abuse cases predominantly to female practitioners) these should be addressed through the clerks' room. If the issue cannot be resolved through the clerks' room, it may need to be addressed by the Head of Chambers and the solicitor(s) involved.
- 1.45 Any unequal or unfair treatment of pupils and members of Chambers in the allocation of work should be treated as a serious matter and dealt with appropriately so that it does not recur.
- 1.46 Chambers should ensure that all clerks are fully briefed on the need to distribute work in a fair and non-discriminatory manner and to monitor work allocation. Clerks, and in particular those involved in the distribution and monitoring of

work allocation, should be provided with equality and diversity training.

- 1.47 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). 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. Any solicitor who insists on a directly discriminatory allocation of work should be reported to his or her professional disciplinary body. The work should be refused.

<p style="text-align: center;">LINK TO SOLICITORS ANTI DISCRIMINATION RULE AND GUIDELINES.</p>
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Practice Development

- 1.48 Chambers should arrange regular feedback sessions for working pupils and practice development meetings for tenants. The purpose of these meetings is to enable discussion of the allocation of work, work opportunity and development of individual practices.
- 1.49 Chambers are encouraged to set up mentoring schemes whereby a junior tenant may be a pupil's "mentor" and a junior tenant may be linked to a more senior member of Chambers who can offer advice and guidance regarding practice development in a mentoring role. This will be relevant also to barristers returning to practice following a career break.

Marketing of Barristers and Pupils

- 1.50 Marketing strategies for tenants and pupils should take into account equal opportunities considerations. For example, socialising after work in the pub may provide an effective means of "networking" for those who do not have childcare commitments or substantial student debts or both.

Socialising in the pub may exclude pupils and junior tenants whose religious beliefs preclude the drinking of alcohol. Chambers should be sensitive to these issues and should ensure that marketing and networking activities are organised so that all pupils and tenants can, so far as practicable, be equally involved.

- 1.51 Chambers should encourage pupils and junior tenants to take part in Chambers' seminars and lectures, attend outside seminars and lectures, write or contribute to articles in professional publications, become involved in professional organisations connected to their line of work and become involved with any legal advice or support centres or organisations.
- 1.52 The organisation of regular "Practice Group Meetings" within Chambers is encouraged as a means of discussing individual and Chambers' issues and as a means of integrating pupils and members of Chambers.

C. MATERNITY, PATERNITY AND PARENTAL LEAVE

Written Policies

1.53 All Chambers of more than one tenant should have a written policy on maternity, paternity, parental leave and flexible working. This policy should contain particulars of:

- the member's right to return to Chambers after a specified period of leave;
- the extent of the periods of leave offered free of Chambers' rent and expenses;
- the manner in which the rent and expenses to be waived, deducted or reimbursed in respect of a period of leave will be calculated;
- the member's entitlement to work part-time or flexibly or to take a career break for childcare or other reasons;
- the procedure for dealing with grievances under the policy;
- Chambers' commitment regularly to review the effectiveness of the policy.

Period of Leave Free of Rent and Chambers' Expenses

1.54 The Maternity, Paternity and Flexible Working Policy approved by the Bar Council recommends that Chambers should offer their members taking maternity leave or leave following adoption, a minimum period of six months' free of Chambers' rent and expenses. This rent-free period should apply irrespective of whether the Chambers' rent is calculated as a percentage of fees earned or is a flat rate payment. The mechanics of calculation will be a matter for individual Chambers depending upon how rent is paid. For women paying a percentage of receipts, one option is to base the calculation of the rent free period on average earnings over the preceding twelve months. The rent-free period could be applied during the six months after the woman has returned to Chambers as this would be a time of relatively low income. Policies may need to cover matters such as clerks' fees, mortgage repayments and any

contributions payable in respect of one-off investments, as appropriate.

[LINK TO MATERNITY, PATERNITY AND FLEXIBLE WORKING POLICY](#)

- 1.55 The Maternity, Paternity and Flexible Working Policy approved by the Bar Council recommends that members of Chambers should be offered a minimum of one month's leave free of Chambers' rent and expenses following the birth or adoption of a child by their partner, where they have or share responsibility for that child and so that they can discharge that responsibility.
- 1.56 These recommended minimum periods of leave are not intended to discourage Chambers from adopting a more generous policy.

Right to Return to Chambers

- 1.57 The Bar Council recommends that a woman should have the right to return to her Chambers as a tenant following the birth or adoption of a child. The right to return should continue for a guaranteed period of at least a year. During that period, she should be able to return to Chambers without the need to re-apply for admission. Chambers are encouraged to offer a longer period of leave.
- 1.58 The recommendation in paragraph 1.57 should also be applied to a man who adopts and is the principal carer of the adopted child.

Assistance to Return to Chambers and to Work During Maternity Leave or Career Break

- 1.59 Chambers are encouraged to respond positively to members' wishes to work during their maternity leave or any career break. Chambers' written policy should set out how Chambers plan to assist their members to keep in touch with Chambers and with practice developments during any period of leave and to return to practice. Invitations to training events, social occasions and information on Chambers' business should be passed on to members on maternity leave or a career break and Chambers should endeavour to

consult with them in relation to major Chambers' decisions which may affect the member's practice.

Grievance Procedures, Monitoring and Review

1.60 Chambers should adopt procedures which enable members to raise concerns about the Chambers' maternity, paternity and flexible working policy and its application. There should be one or more Chambers Equal Opportunity Officers (see para. 2.14 below) who can respond to queries about the policy and provide reports on its effectiveness and value. The policy should be circulated to all members, clerks and staff of chambers so that they understand the policy and their role in relation to it.

LINK TO GUIDE TO THE IMPLEMENTATION OF MATERNITY, PATERNITY AND PARENTAL LEAVE POLICIES UNDER QUALITY MARK OR BAR MARK.

D. FLEXIBLE AND PART-TIME WORKING AND CAREER BREAKS

Bar Council Recommendations

1.61 All Chambers of more than one tenant should have written policies permitting members of Chambers (female or male) to take career breaks, work flexible hours, part-time or partly from home to enable them to manage their family responsibilities and remain in practice. Such policies should reflect, in particular, the needs of the primary carer in relation to childcare responsibilities.

Written Policy

1.62 Chambers' arrangements for the payment of rent should not constitute disincentives to flexible working. Earnings related arrangements for the payment of rent may be preferable to fixed rates. A policy of fixed rent without any qualification is potentially indirectly discriminatory against women because it is likely to impact on a greater proportion of women than men (see para 2.16.b where indirect discrimination is explained). Rent arrangements need to reflect the economic effect on the individual and the Chambers, as do arrangements such as desk space and any capital benefit obtained from mortgage repayments on property acquired by a set of Chambers.

1.63 Members of Chambers working on flexible working arrangements should be included in Chambers' business and in Chambers' continuing professional development, marketing and social activities in the same way as full-time working members of Chambers.

Advantages of Flexible Working

1.64 Flexible working arrangements should assist in retaining some of the disproportionately high number of women who leave the Bar, including those who leave after having children. This is a loss to the Bar because the presence of women at senior levels broadens the profession's diversity, increases the number of women in the pool for judicial

appointment and strengthens and enhances the profession's marketability. It is also a loss to Chambers in terms of the wasted investment in training and the gap left in seniority.

- 1.65 The availability of flexible working arrangements is likely to increase commitment to Chambers and the profession and improve morale.
- 1.66 The Bar has always accommodated flexible working: allowing barristers to combine practice at the Bar with part-time judicial appointments, writing, academic or political appointments. Flexible working for reasons associated with child care or other domestic responsibilities can and should be treated in a similar way. Barristers are already accustomed to working in teams and returning work to their colleagues when they are unavailable.
- 1.67 The arrangements which any particular Chambers puts in place will need to reflect the nature of the membership and the work undertaken. Systems such as telephone conferencing, and e-mail should be used to best advantage to enable members of Chambers to conduct their practices from home where desired. Different working patterns may suit different individuals: for example, working during school term times only for a parent with children of school age.
- 1.68 Individual practitioners should recognise that reduced working hours will have an economic effect on their Chambers and should themselves be proactive in 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.

[LINK TO GUIDANCE ON FLEXIBLE WORKING ARRANGEMENTS EXAMPLES](#)

E. HARASSMENT

What is Harassment?

- 1.69 Harassment is any form of unwanted conduct which has the aim or effect of diminishing a person's dignity or creating a humiliating or offensive environment for that person. The fact that one person may be able to ignore or deal comfortably with certain behaviour does not mean that it is acceptable if directed at another. A single incident may constitute harassment if it is sufficiently serious. The motive or intention of the perpetrator is normally irrelevant (see para. 2.18 in relation to harassment which also constitutes unlawful discrimination).
- 1.70 There is now a criminal offence of intentional harassment. It covers harassment on any ground. The Act defines harassment as the use of "threatening, abusive or insulting words or behaviour; or disorderly behaviour" or displays of writing, signs or other visible representation which is threatening, abusive or insulting, and includes harassment at the workplace. Harassment amounting to physical or sexual assault is also a serious criminal offence and victims should be encouraged to report it to the police.

Policy

- 1.71 All Chambers should have a harassment policy, which sets out a clear summary of the type of behaviour which is unacceptable in the working environment and the procedures for dealing with complaints about such behaviour. The policy should apply to all members and employees of Chambers, squatters and pupils and personal copies should be provided.

[LINK TO MODEL HARASSMENT POLICY](#)

- 1.72 Complaints of harassment are sensitive and Chambers should adopt policies which enable them to react quickly and appropriately if a complaint is raised. It becomes much more

difficult to deal with complaints effectively where there is delay.

Guidance

1.73 Harassment causes distress. It can lead to impaired work performance, sickness, and even to recipients leaving Chambers altogether. Many recipients of harassment are afraid to complain. They fear that their complaint will be trivialised or that they will be subject to ridicule or reprisals or that nothing will be done.

1.74 Examples of behaviour which may amount to harassment based on sex, race, disability, religion or sexual orientation include:

- physical assault, including sexual assault;
- demands for sexual favours in return for career advancement;
- unnecessary physical contact;
- exclusion from social networks and activities;
- isolation;
- bullying;
- compromising suggestions or invitations;
- suggestive remarks or looks;
- display of offensive materials, including on computer screen;
- tasteless jokes or verbal abuse;
- offensive remarks or ridicule;
- dealing inappropriately with complaints of harassment.

1.75 By undertaking certain specific steps, Chambers should be able to alleviate the problems of harassment in the context of work related relationships. In particular, the following is recommended:

- a policy statement which makes it clear that harassment will not be tolerated or condoned and that employees, members of Chambers, pupils and others temporarily in

chambers such as mini – pupils have a right to complain if it occurs;

- effective communication of the policy to all those to whom it applies;
- active promotion of the policy by people in managerial positions;
- training for those in managerial and supervisory roles on how to keep the working environment free of harassment and how to deal with it should it occur;
- the provision of informal means of resolving harassment in the first instance;
- the designation of an adviser to assist employees and others subjected to harassment;
- a formal complaints procedure, which should be monitored and reviewed;
- an independent, objective, sensitive and fair procedure for internal investigations of complaints; and
- a principle of treating violations of the harassment policy as a disciplinary offence.

1.76 Often victims of harassment just want the harassment to stop and do not wish to see the harasser disciplined. There are various informal methods by which Chambers can deal with complaints of harassment, including:

- telling the harasser that their behaviour is unacceptable and asking them to stop immediately (if the recipient feels able to challenge the harasser directly or indirectly in this way);
- seeking the help and advice of the Inns' Student Officers where the harassment occurs in an Inn of Court or at an Inn's sponsored event;
- seeking the help and advice of the Bar Council's Equality and Diversity Advisers directly or by calling the confidential telephone number 020 7611 1310
- seeking the help and advice of pupil supervisors or other members of Chambers.

Formal Resolution Options

1.77 Where informal methods fail to resolve the issue, or where the harassment complained of is of a more serious nature to begin with, one or more of the following formal methods of resolution may be appropriate:

- the initiation of Chambers' formal complaints or grievance procedure;
- contacting the relevant Inn to make a formal complaint where the complaint concerns a sponsor or pupil supervisor or something occurring at an Inn sponsored event;
- a complaint to the Professional Conduct Committee which has in place a special protocol for dealing with complaints of harassment;
- initiation of the Bar Council's mediation procedure in confidence through the Bar Council's EDAs. The Mediation Panel is made up of individual members of the Bar who have received training in harassment mediation. The role of the panel is to advise the complainant and, with his or her permission, to mediate between the parties, without necessarily finding fault or blame and without the imposition of sanctions
- in extreme cases, the complainant might consider whether a complaint should be made to the police where the act complained of amounts to a criminal offence or whether a complaint of unlawful discrimination might be brought in a County Court or employment tribunal.

F. COMPLAINTS AND GRIEVANCES

Complaints Handled Internally

1.78 The Bar Council recommends that all Chambers should have a written grievance procedure and that this should include procedures for handling complaints of discrimination and harassment. The procedure should be brought to the attention of every pupil, tenant and Chambers' employee.

[LINK TO MODEL GRIEVANCE PROCEDURE](#)

1.79 It is important for a person who has a complaint about discrimination, particularly where harassment is alleged, to have access to someone who can give them sympathetic advice and, if necessary, counselling. This should take place in an atmosphere of total confidentiality.

1.80 Complaints and grievances should be dealt with promptly, objectively and fairly.

1.81 In order to assist in the effective resolution of grievances within Chambers it is recommended that, in addition to the formal procedure, Chambers should nominate one or two members of Chambers to act as informal advisers to potential complainants, and to assist, when asked, in the informal resolution of grievances.

1.82 Barristers who have paid their voluntary subscriptions and their clerks may also approach the Bar Council Arbitration and Conciliation Service to resolve disputes between barristers themselves and between barristers and their clerks.

[LINK FOR INFORMATION ON ARBITRATION AND CONCILIATION SERVICE](#)
– SEE THE BAR COUNCIL WEBSITE –

1.83 Chambers' employees are able to raise complaints through the new statutory grievance procedures which, together with statutory dismissal and disciplinary procedures, are an

implied term of all contracts of employment in all Chambers regardless of size or number of employees.

LINK TO INFORMATION ON STATUTORY PROCEDURES SEE D.T.I. WEBSITE – RESOLVING DISPUTES: A NEW APPROACH IN THE WORKPLACE

1.84 When a complaint is made, in the interests of all concerned, confidentiality should be maintained throughout any investigatory process as far as possible and as appropriate in the circumstances. Names of complainants must not be released (save to those conducting the investigation and to the person complained against) without their consent

Formal Procedures

1.85 Formal grievance procedures should include:

- the allocation of responsibility for investigating complaints to at least two members of Chambers, including one senior member, each of whom should be familiar with the Code of Conduct and the Equality and Diversity Code for the Bar. In the event of a conflict of interest, provision should be made for the involvement of additional members of Chambers, or other nominated persons;
- names of Chambers' informal advisers;
- an undertaking that complainants will not be victimised or suffer detriment because of a complaint made in good faith;
- an undertaking that all procedures will, as far as practicable, be confidential;
- a requirement for the complaint to be made in writing;
- a time limit within which a written response should be delivered;
- the range of remedial actions where complaints are substantiated;
- identification of the relevant Bar Council Committees and external bodies to which complaints may be addressed;
- an indication of opportunities for support and counselling provided by the associations and groups for women lawyers, members of minority ethnic groups, disabled people, lesbians or gay men, the Pupil Barristers' Group or the Mature Entrants' Group. Confidential assistance

may also be sought from the Equal Opportunities Officers at the Bar Council.

Complaints of Unfair Work Allocation

1.86 By establishing regular monitoring and reviews of allocation of work, Chambers should reduce the need for formal complaints by providing a regular opportunity to identify and remedy problems. Where there is a complaint about the distribution of work from a pupil or tenant, the complaints procedure set out above should apply. A set period during which more detailed monitoring of the distribution of work will take place, may be included as a step in the investigation of the complaint.

Complaints of Harassment

1.87 See paragraphs 1.73 to 1.77 above.

Remedies

1.88 Where, following investigation of a complaint, actual or potential discrimination has been identified, remedial action should be taken immediately. This may include all or some of the following:

- a re-evaluation of the applications and/or another interview with another panel (e.g. for a complaint from an unsuccessful applicant for pupillage, tenancy or a job);
- a change of practice (e.g. in relation to unfair work allocation);
- implementation of a reasonable adjustment (in relation to a complaint from a disabled person);
- further advice, briefing or training for the members of selection panels, Chambers clerks and staff;
- advice and support to ensure that the complainant is not victimised as a consequence of making a complaint in good faith;
- disciplinary action.

1.89 A report on all complaints, and on the findings of the investigations, should be made to the Head of Chambers.

Chambers should maintain confidential records of all complaints and records of meetings. These should be reviewed annually to ensure that the procedures are working effectively.

- 1.90 Chambers may be required to explain how they investigated any complaint that is taken to the Bar Council or other external body. An analysis of any complaints received will also be useful in identifying problem areas, training needs or scope for further action when Chambers review their procedures.

Complaints Made to External Bodies

- 1.91 Any individual (member of Chambers, pupil, employee or client) may complain about the conduct of an individual barrister to the Professional Conduct and Complaints Committee of the Bar Council, or to the Inn about a pupil supervisor.
- 1.92 Where an individual has a statutory complaint of unlawful discrimination, the complaint may be pursued through the employment tribunals or County Court as appropriate.

G. SERVICE PROVISION

Service provision to disabled clients

Introduction

1.93 This section will focus on the practical issues connected with service delivery, as it relates to disability, within the context of the legislative framework. It is designed to assist Chambers and individual barristers to comply with the disability legislation and generally to improve the services offered to disabled people by the Bar.

1.94 Disability is not always visible and many disabled people choose not to disclose their disability. Disability encompasses, for example, certain musculo-skeletal problems, circulatory conditions and mental illness.

1.95 Barristers are likely to come into professional contact with many disabled people including lay and professional clients, colleagues, pupils, members of the judiciary, witnesses and staff within the judicial system.

Obligations Under the Disability Discrimination Act 1995 (“DDA”)

Who are the Clients to Whom Duties are Owed?

1.96 Obligations are owed to "disabled" persons. The term "disabled" receives a statutory definition in section 1 of the DDA. The disabled person may be the lay client or any person from the instructing solicitors. The duties under this code will also apply to other persons to whom the barrister or set of Chambers provide services or come into contact (such as witnesses in a case).

Who Owes the Duties?

1.97 A set of Chambers will be a "service provider" for the purposes of the provisions of the DDA dealing with discrimination in the provision of services. A set of chambers will therefore owe duties under section 19 of the DDA both to

the lay client and to the professional client. An individual barrister will also be a service provider and will therefore owe duties as such under the DDA.

What are the Duties?

1.98 The DDA makes it is unlawful for a barrister or set of Chambers to discriminate against a disabled person:

- by refusing to provide (or deliberately not providing) any service which it provides (or is prepared to provide) to members of the public; or
- in the standard of service which it provides to the disabled person or the manner in which it provides that service; or
- in the terms on which it provides a service to the disabled person (S19.DDA).

1.99 Pro bono cases remain part of service provision and are subject to exactly the same duties as paid cases. Providing conference facilities at Chambers is also deemed to be the provision of a service.

1.100 It is also unlawful for service providers such as a set of Chambers or an individual barrister to discriminate in failing to comply with a duty to make reasonable adjustments (section 21 DDA).

1.101 The following are the duties owed by a service provider to a disabled person:

- not to discriminate against the disabled person by treating the disabled person less favourably for a reason related to the disabled person's disability (section 20 (1));
- not to discriminate against the disabled person by failing to comply with a duty to make a reasonable adjustment causing the disabled person to find it either impossible or unreasonably difficult to use the service provider's services for example by failing to remove, alter or avoid physical features which make it impossible or unreasonably difficult for the disabled person to use the service;
- not to victimise any person (whether disabled or not) by treating them less favourably because they brought

proceedings, gave evidence or information or made allegations relating to the DDA.

1.102 It is possible to justify discrimination against a disabled person but only in certain limited circumstances, defined in the DDA.

Less Favourable Treatment

1.103 A service provider discriminates against a disabled person if, for a reason which relates to the disabled person's disability, it treats the disabled person less favourably than it treats (or would treat) others to whom the reason does not (or would not) apply and it cannot show that the treatment in question is justified (section 20 (1) DDA).

It is not necessary that the barrister knows that the person is a disabled person for less favourable treatment to occur.

1.104 It is unlawful to refuse to serve a disabled person or deliberately not serve the disabled person for a reason relating to the disabled person's disability (section 19(1) (a) DDA).

1.105 It is unlawful to provide service of a lower standard or in a worse manner to a person for a reason relating to or the disabled person's disability (section 19(1)(c) DDA).

1.106 It is unlawful to provide a disabled person with a service on worse terms (for example by charging more) for a reason relating to that person's disability (section 19 (1) (d) DDA).

1.107 Chambers should note that the DDA does not prohibit positive action in favour of disabled people (see para. 2.2 for distinction between positive action and positive discrimination). The protection of the DDA confers positive advantages on disabled people in certain respects.

The Duty to Make Reasonable Adjustments

1.108 As a service provider, a set of Chambers is required to make reasonable adjustments in several areas unless it can show that the failure to make a reasonable adjustment is justified.

1.109 The duty to make reasonable adjustments is owed to disabled people at large and not just individual disabled people. Barristers and Chambers therefore should not wait until a disabled person wants to use their services before investigating the need to make reasonable adjustments. It is recommended that barristers and Chambers should look at adjustments that they can make on an ongoing basis (whether or not they currently provide services to disabled people). The idea is to anticipate the requirements of disabled people and in order to do this effectively consultation should take place with existing disabled clients or disabled potential clients. Whilst this may not be possible to do on an individual basis, barristers and Chambers should consider consulting organisations of disabled persons to obtain their views.

1.110 The law requires reasonable adjustments to be made in the following areas:

- changing practices, policies and procedures;
- providing auxiliary aids and services;
- adjusting a physical feature by either removing the feature or altering it or ensuring that it can be avoided, or providing services by alternative means.

1.111 The service provider has a duty to take reasonable steps to change the policy, practice or procedure which makes it impossible or unreasonably difficult for disabled people to make use of its services.

1.112 When considering whether the services of a barrister or Chambers are unreasonably difficult for disabled people to use, account should be taken of whether the time, inconvenience, effort, discomfort or loss of dignity entailed in using the service would be considered unreasonable by other people if they had to endure similar difficulties. There may be unreasonable difficulty, for example, where a client in a wheelchair has to be carried up three steps to a conference room.

1.113 It is sensible to try to anticipate the needs of disabled clients rather than acting in a wholly reactive way. Consultation with organisations of disabled people about the needs of a group

which may use the services of Chambers will help to give Chambers an idea of the kind of adjustments that it may need to make. Similarly an individual barrister should consider consulting such organisations if he or she anticipates working with a disabled person on a particular case. Chambers and individual barristers should therefore indicate that reasonable adjustments will be made on request if this will assist disabled people to use their services.

1.114 Chambers or a barrister may discriminate unlawfully even if they do not know that a client is disabled. It is worthwhile remembering that not all disabilities are visible. What is important is not to act on assumptions, but to be prepared to ask in advance what reasonable adjustments can be made to ensure that the service of Chambers or the barrister can be used without the disabled person being put to unreasonable difficulty. If it is not reasonable to anticipate a particular requirement the barrister will not act unlawfully if he or she does not anticipate it.

1.115 The duty to make reasonable adjustments is a continuing duty, and it may be necessary to make more than one adjustment. The best approach is to consider what changes can be made in practical terms to ensure that the disabled person can use the barrister's or Chambers' services without unreasonable difficulty. The disabled person should be consulted about what he or she believes is the best solution. That view is not going to be conclusive and the barrister will have to consider what is a reasonable step to have to take in order to achieve this end.

1.116 In deciding whether it is reasonable to take any particular step, consideration could be given to whether it would be effective in overcoming the difficulty that disabled people face in accessing the services of Chambers or the barrister. Consider whether it would be practicable to take the step, and the financial and other costs of making the adjustment. Some steps which are suggested would cause disruption. A certain amount of disruption can be required but not a disproportionate amount. Chambers and barristers are entitled to take account of financial and other resources as

well as the amount of resources already spent on making adjustments.

- 1.117 What needs to be borne in mind is the ultimate aim of rendering services accessible without unreasonable difficulty. Making adjustments for one group of disabled people will not absolve the Chambers from making different adjustments for different disabled people.
- 1.118 Providing access to Chambers for any purpose is also covered. Both the set of Chambers and also the Inns of Court may owe duties to members of the public attending Chambers. If the Inns of Court do not provide a reasonable means of access to Chambers through the common parts so that access through them remains impossible or unreasonably difficult for disabled people (which may result from difficulties in obtaining planning permission), the Chambers may have duties to provide a reasonable means of avoiding the physical feature which is causing the difficulty. In those circumstances, Chambers will also have a duty to provide a reasonable alternative method of making its services available to disabled persons. For example a Chambers which does not have wheelchair access may have to consider holding conferences with a wheelchair user away from Chambers.
- 1.119 If Chambers decides to make adjustments to its premises these should be drawn to the attention of disabled people (for example by a sign). Similarly if it is the intention of Chambers to make its services accessible by providing auxiliary aids, this should be made known.
- 1.120 It will be exceptionally rare for a Chambers or a barrister not to have to make any adjustments that would render services accessible to disabled persons. It is strongly recommended that a periodic audit be conducted by a nominated person in Chambers who should be mandated to discuss matters with individual barristers.
- 1.121 There is no obligation on Chambers or a barrister to take any steps which would fundamentally alter the nature of its service.

1.122 When a barrister or Chambers complies with the duty to make reasonable adjustments they are not entitled to pass on any additional costs of compliance solely to disabled clients.

1.123 The duty to make adjustments may affect the Chambers' policies (what it intends to do), its policies (how it plans to go about providing its services) and its practices (what it actually does when providing services).

1.124 The barrister or set of Chambers must take reasonable steps to provide auxiliary aids including equipment or services if these would facilitate disabled people using its services. An auxiliary aid may be the provision of a special piece of equipment but it is more likely, in the case of barrister services, simply to be the provision of some extra assistance to disabled people.

1.125 The obligation is to take such steps as it is reasonable for the barrister or Chambers to take in all the circumstances of the case to make its services accessible to disabled people. Therefore consideration needs to be given to the size and resources of the Chambers (or the resources of the individual barrister) as well as the cost of providing the auxiliary service.

1.126 The Disability Rights Commission (DRC) Code of Practice gives examples of the kind of auxiliary services or aids that may be appropriate for people with hearing disability (paragraph 5.23 and following) and visual impairments (paragraph 5.26 and following).

[LINK TO THE DISABILITY RIGHTS COMMISSION WEBSITE ADDRESS](#)

Adjustments to Physical Features

1.127 In terms of physical features it is advisable that an access audit should be carried out on a Chambers' premises. During this the views of people with different disabilities or those representing them should be sought, as this may help in identifying barriers and developing solutions. The best approach to removing the effect of physical features on

accessibility is to alter the physical feature itself so as to create an inclusive environment. Removal of physical barriers will be preferable to alternative arrangements. There is an inherent loss of dignity for the disabled person in having to use some alternative route for example. It is only if it is not reasonable to remove the physical feature, or to alter it, that such alternative route adjustments should be made.

1.128 The DRC Code contains specific guidance on how the building regulations and leases affect reasonable adjustment duties. What needs to be borne in mind is that the duty to make adjustments will still arise in respect of any access issues and regardless of whether no physical adjustments are required or permitted.

1.129 Adjustments to physical features may require the consent of the landlord. Regulations provide that it is reasonable for the service provider to have to request consent but that it is not automatically reasonable for the service provider to have to make an alteration just because consent has been given. In essence the landlord may not unreasonably refuse consent to a reasonable alteration which is necessary to comply with the duty to make adjustments. The landlord is entitled to attach reasonable conditions to the consent. Detailed guidance is given in the DRC's Code concerning these regulations and the obtaining of consent [see para. 1.126 above].

Justification

1.130 Both less favourable treatment and a failure to make reasonable adjustments may be justified on specific grounds which are set out in section 20 (4) of the DDA provided that the discrimination is not direct discrimination. The Chambers or the barrister must reasonably believe that one or more of the following conditions are satisfied:

- the service provider is not obliged to do anything which would endanger the health or safety of any person;
- the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent,

and for that reason the treatment is reasonable in that case;

- (in relation to refusing to provide, or deliberately not providing, any service) the treatment is necessary because the Chambers or barrister would otherwise be unable to provide the service to members of the public;
- (in relation to the standard of service or the terms on which it is provided) the treatment is necessary in order for the Chambers or barrister to be able to provide the service to the disabled person or to other members of the public.
- (In relation to the terms on which the service is provided) the difference in the terms on which the services provided to the disabled person and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the disabled person. However any increase in the cost of providing a service to the disabled person resulting from compliance with the duty to make reasonable adjustments disregarded for this purpose.

[LINK TO PRACTICAL GUIDANCE ON SERVICE PROVISION FOR DISABLED CLIENTS](#)

Other Areas of Potentially Discriminatory Service Provision

1.131 Discrimination by barristers as service providers on the ground of race or sex is unlawful. Discrimination on any other ground covered in paragraph 305 of the Code of Conduct is prohibited.

1.132 Examples of discriminatory service provision include the following:

- the racial or sexual harassment of a professional or lay client;
- a refusal to accept instructions to act on behalf of individuals or groups defined by their race, sex, sexuality, religion or belief;
- providing a service that is inappropriate (e.g timing of conferences with clients with childcare responsibilities)

- failing to take account of the religious needs of clients in relation to dress, food and drink or religious observance;
- asking irrelevant questions based upon assumptions about client's sexuality.

1.133 Chambers should ensure that their members are equipped to provide an appropriate level of service for their clients by arranging diversity training for members of chambers and chambers staff. Clients whose first language is not English may have particular needs for interpreters and the Bar Council has produced a guidance document on this subject.

LINK TO INFORMATION ABOUT DIVERSITY CONSULTANTS AND TRAINERS CAN BE FOUND ON THE DIVERSITY WEBSITE- ANNEX A. USE OF INTERPRETERS IN COURT CAN BE FOUND ON THE BAR COUNCIL WEBSITE- ANNEX A. INFORMATION ON THE JUDICIARY CAN BE FOUND ON THE JUDICIAL STUDIES BOARD WEBSITE

H. STAFF IN CHAMBERS

1.134 Practice Management for the Bar sets out standards and guidelines covering the main areas of practice management. This includes recruitment and a section on personnel management which states the recommended standards for managing staff together with detailed guidance on their implementation. The comprehensive guidance in Practice Management is not replicated in this document. The recommendations for good practice set out here in earlier chapters are equally applicable to chambers staff and many of them explicitly include chambers staff.

LINK TO PRACTICE MANAGEMENT FOR THE BAR CAN BE FOUND ON THE BAR COUNCIL WEBSITE

1.135 Recruitment of chambers' staff should follow the recommendations relating to pupillage and tenancy recruitment wherever appropriate, for example open advertisements, clear and objective selection criteria and panel interviews.

1.136 It is important to ensure that all equal opportunity policy initiatives developed in Chambers cover staff as well as members of Chambers whenever appropriate. The Equal Opportunities Commission, Commission for Racial Equality and Disability Rights Commission have all developed Codes of Practice in recruitment.

LINK TO CRE, EOC AND DRC WEBSITE ADDRESSES

Maternity, Paternity, Parental Leave

1.137 A policy for staff will differ markedly from a policy for members. Chambers should set out their policy for staff on maternity, paternity and parental leave and flexible working. This should, at least, meet the minimum legislative requirements. These provide for:

- time off for ante-natal care;
- Periods of paid and unpaid maternity leave for women following childbirth;

- paternity leave and pay for fathers;
- adoption leave and pay for individuals who adopt or one partner of a couple who jointly adopt;
- paternity leave and pay for the other member of the couple;
- parental leave for up to 13 weeks for parents with children (including adopted) under the age of six. This is extended to eighteen if the child is disabled.
- a reasonable amount of unpaid time off to deal with an emergency situation.

Complaints and Grievances

1.138 Chambers should have a written complaints and grievance procedure for staff which includes procedures covering complaints of discrimination and harassment. These should provide for both formal and informal routes for making complaints. Chambers should nominate an 'approachable' person in chambers to act as an informal adviser to staff. For further information see Action Area F.

SECTION 2: LEGAL & REGULATORY

FRAMEWORK

Statutory Regulation

- 2.1 Barristers owe a legal duty not to discriminate on grounds of race, sex, disability, sexual orientation or religion or belief and a duty not to discriminate indirectly or to victimise in:
- the recruitment of staff and the selection of pupils and tenants;
 - the terms, opportunities for training or gaining experience, benefits and services for prospective or current members of staff, pupils and tenants;
 - the termination of service of staff or the termination of pupillage or tenancy, including pressure to leave;
 - subjecting staff, pupils or tenants to detrimental treatment.
- 2.2 Discrimination following termination of the relationship between barristers and staff, pupils or tenants may be unlawful where there is sufficient connection between the relationship and the discriminatory act complained of, for example in the provision of references or post-employment benefits.
- 2.3 It is unlawful for barristers to discriminate against lay or professional clients in the provision of services on grounds of sex or race or for reasons relating to disability.
- 2.4 Discrimination “on racial grounds” encompasses nationality, race, colour and ethnic origins.
- 2.5 Sex discrimination encompasses not only gender but also marital status, pregnancy and gender reassignment. Discrimination on grounds of pregnancy is a particular type of sex discrimination where no comparator is required, so that it is no defence to a claim based on pregnancy that a man absent by reason of sickness would have been treated in a similar fashion.

- 2.6 Many of the duties apply to barristers' clerks as they apply to barristers.
- 2.7 Disability is a legal concept defined in the DDA. It includes not only obvious visible disability but may include conditions such as manic depression or other mental impairment. Particular rules are made in respect of progressive conditions such as cancer. There is a positive duty to make reasonable adjustments to accommodate a disabled person, such as providing communications equipment or alterations to premises.
- 2.8 Age discrimination will be outlawed as from 2006.
- 2.9 The relevant statutory provisions are to be found in the Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion and Belief) Regulations 2003, Disability Discrimination Act 1995 (Amendment) Regulations 2003; EU Equal Treatment, Race Discrimination and Framework Employment Directives.

Bar Code of Conduct

- 2.10 Para. 305 of the Code of Conduct prohibits discrimination directly or indirectly by a practising barrister in relation to:
- any other person including a lay or professional client, another barrister, a pupil or student member of an Inn of Court
- on the following grounds:
- race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion.
- 2.11 To the extent that discrimination in the provision of services is not unlawful (for example, where discrimination is on grounds of sexual orientation or religious belief), the Code of Conduct makes such discrimination a matter of professional misconduct.

- 2.12 Discrimination on grounds of age in relation to pupillage and tenancy selection is prohibited unless it can be shown to be objectively and reasonably justifiable, para. 305(ii).
- 2.13 The Code of Conduct, para. 403 requires a barrister to have regard to this code, which is likely to be taken into account by Courts, tribunals and disciplinary panels in deciding whether discrimination has occurred.
- 2.14 Paragraph 404.2(d) of the Code of Conduct¹ requires that Chambers
- a. appoint at least one Equal Opportunity Officer ; and
 - b. have a written equal opportunities policy made available to all members of Chambers and staff and to the Bar Council when requested, which shall set out the policy adopted by the Chambers in relation to each of the Action Areas in the Equality and Diversity Code and shall have regard to the recommendations in the Equality and Diversity Code;
 - c. shall not hold itself out as offering pupillages until the steps set out in a. and b. above have been complied with .

[LINK TO GUIDANCE ON THE ROLE OF THE CHAMBERS EOO](#)

- 2.15 The Pupillage and Funding Requirements 2003, set out in Annexe R of the Code of Conduct, require that
- 2.16 All vacancies for pupillage are advertised on a website designated by the Bar Council, subject to limited exceptions.

[LINK TO THE CODE OF CONDUCT](#)

Bar Council Equal Opportunity Policy Statement

- 2.17 The Bar Council, in pursuit of its constitutional function to represent the interests of the Bar and its statutory functions under the Courts and Legal Services Act 1990, will promote equality of opportunity irrespective of race, colour, ethnic or national origin, nationality, citizenship, sex, marital status,

¹ This amendment to paragraph 404 is awaiting the Department for Constitutional Affairs' approval.

sexual orientation, disability, age, religion or political persuasion.

In accordance with the Code of Conduct of the Bar of England and Wales, discrimination by a barrister is professional misconduct and the Bar Council will take disciplinary action against any barrister or employee of the Bar Council found to have discriminated.

The Bar Council will monitor the effectiveness of its policy and the achievement of its objectives.

Key Concepts

2.18 Unlawful discrimination generally falls into one of three categories:

- a. Direct discrimination: where one person is treated less favourably than another was or would be treated in the same or similar circumstances because of a particular characteristic identified in the anti-discrimination legislation (gender, race, disability, sexual orientation or religion or belief);
- b. Indirect discrimination: where an apparently neutral provision, criterion or practice has a disadvantageous impact upon a particular group and where the provision, criterion or practice is not a proportionate means of achieving a legitimate aim (for example, holding an internal Chambers training seminar at a time when a particular group of members will find it difficult to attend and when the meeting could reasonably be held at some other time which would not exclude any particular group);

Victimisation: where a person is treated less favourably because he or she has brought proceedings under the anti-discrimination legislation, given evidence or information relating to proceedings or has alleged that unlawful discrimination has occurred (or is suspected of intending to do any of the above).

- 2.19 It is not a defence to claims for direct discrimination and victimisation that there was no intention to discriminate or that the discrimination was justified, save that discrimination for a reason related to disability can be justified if the reason for the treatment is substantial and material. This defence of justification has been applied very narrowly by the courts. In relation to indirect discrimination, treatment may be justified if it can be shown that it is a proportionate means of achieving a legitimate aim but the lack of an intention to discriminate is not a defence.
- 2.20 Discriminatory treatment may amount to harassment. Harassment is any form of unwanted conduct which is intended to, or which creates the effect of, violating a person's dignity or which creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. The fact that one person may be able to ignore or deal comfortably with certain behaviour does not mean that it is acceptable if directed at another. A single incident may constitute harassment if it is sufficiently serious. The motive or intention of the perpetrator may be (but is not invariably) relevant. Where harassment is on a ground identified in the anti-discrimination legislation, it will be unlawful. There is a new free-standing definition of harassment contained in various regulations the relevant provisions are the Race Relations Act 1976 (Amendment) Regulations 2003; the Employment Equality (Sexual Orientation) Regulations 2003; the Employment Equality (Religion or Belief) Regulations 2003; and the Disability Discrimination Act 1995 (Amendment) Regulations 2003.
- 2.21 Any "detriment" on a prohibited ground and in a protected area (e.g. employment and provision of services) will amount to unlawful discrimination. Detrimental treatment includes any treatment which the complainant reasonably perceives as disadvantageous.
- 2.22 The concepts applicable under the Disability Discrimination Act 1995 ("the DDA") are in some respects different from other discrimination legislation. The DDA covers claims for direct discrimination which cannot be justified. Barristers and their clerks have a further duty under the DDA to make reasonable adjustments to ensure that a disabled person is not placed at a disadvantage.

Clarifying Some Common Misconceptions

- 2.23 Proof of discrimination does not depend on showing motive or bad faith. It is possible to discriminate without intending to discriminate. Even treatment which is well-intentioned may amount to discrimination.
- 2.24 There is no defence of “joke” or “banter”. Jokes and banter which cause offence may be discriminatory even though there was no intention to cause offence.
- 2.25 Discrimination which involves the more favourable treatment of a member of a disadvantaged group (“positive discrimination”) is unlawful in relation to persons encompassed within the anti-discrimination legislation, save that a form of positive discrimination may be exercised in relation to disabled persons who may require particular adjustments to be made. Applications may be encouraged from groups which are under-represented in an organisation (this is known as “positive action”) but applicants from such groups cannot be positively advantaged in any selection process.

[LINK TO DISABILITY RIGHTS COMMISSION EMPLOYMENT CODE](#)

- 2.26 Individuals from the same protected group may commit acts of unlawful discrimination against each other: a woman may unlawfully discriminate against another woman, for example, or a barrister in one racial group against another member of that group.
- 2.27 Some common misconceptions can be dispelled by appropriate diversity training or by access to information such as that provided to judges by the Judicial Studies Board’s Bench Book. (see paragraph 1.133)

How Does an Individual Prove Discrimination?

- 2.28 If there is a difference in treatment and a difference in the relevant identifying characteristic (e.g. gender) of two persons in the same or similar circumstances, an inference of unlawful discrimination may be drawn. It is rare for discriminatory attitudes to be expressed overtly and unlawful discrimination may take place without the perpetrator being

conscious that he or she is discriminating. The inference drawing process is the method by which Courts and tribunals test whether there has been unlawful discrimination.

- 2.29 In looking at whether inferences should be drawn, Courts and tribunals look at factors such as whether there have been assumptions or stereotyping which have influenced the complainant's treatment.

Sometimes, an organisation may demonstrate a preference for individuals in their own image: "people like us" or someone "whose face fits" or who will "fit in". Ignorance of cultural difference may lead to the application of inappropriate evaluations of behaviour or attitude.

- 2.30 An explanation for the difference in treatment which is objectively adequate will usually prevent any inference arising. Good practice gives a large measure of protection. For example, if objective criteria have been applied to all candidates in a recruitment exercise by a panel of interviewers and a reasoned decision has been made and recorded, a Court or Tribunal is more likely to be persuaded that a decision has not been influenced by excessively subjective and discriminatory judgments.

- 2.31 Whilst the civil standard of proof applies in discrimination cases in the employment tribunal and County Court, the criminal standard of proof applies in disciplinary proceedings for breach of the Code of Conduct. In the employment tribunal and the Courts and employment tribunal in race, sex, religion or belief and sexual orientation discrimination cases, the burden of proof shifts to the employer/ respondent/ defendant where an employee/applicant/claimant establishes facts from which unlawful discrimination could be inferred in the absence of an adequate explanation.

[LINK TO A LIST OF USEFUL CONTACT ADDRESSES](#)