

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Guidelines on the Equality and Diversity Provisions of the Code of Conduct

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Introduction

About the Guidelines on the Equality and Diversity Provisions of the Code of Conduct

1. These Guidelines are designed to be an essential 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.
2. It is structured so that different parts can be downloaded separately, and each section includes links to other sections of the code, or to external websites, or to documents available on other parts of the Bar Council and BSB websites.

Key reasons for chambers to adopt equality and diversity policies

3. There are three key reasons underpinning the adoption of equality and diversity policies for 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

5. Discrimination on grounds of race, sex, disability, pregnancy and maternity, sexual orientation, gender re-assignment, religion or belief, or age, is unlawful and also constitutes professional misconduct. These Guidelines provide 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.
7. In 2007, the Crown Prosecution Service published an 'Equality and Diversity Expectations Statement for the Bar', and in 2008 the Attorney General's 'Equality and Diversity Expectations Statement for Civil and Criminal Panel Counsel and their chambers' was published. Chambers are now required to demonstrate a real commitment to equality and diversity in order for their members to undertake Crown Prosecution Service and Treasury Panel work, and it is likely that other similar initiatives will be launched by the public and private sectors.

The structure of the Guidelines

These Guidelines consist of 13 sections, as follows:

Section 1 – Basic Principles

8. This section explains the key legal and regulatory obligations on chambers and individual barristers. It also includes guidance on how to implement equality and diversity policy and practice in chambers.
9. The legal obligations are those flowing from the current legal framework.

Sections 2 to 10 – Key Topics

10. Sections 2 to 10 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.
11. For each topic, we 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.

The key topics are:

- core equality requirements
- recruitment in chambers
- fair access to work
- maternity and adoption leave
- flexible and part-time working and career breaks
- harassment
- equality monitoring
- providing services to disabled people

Section 11

12. This section contains model harassment and parental leave policies that chambers may wish to use in meeting their obligations under the Code of Conduct. There is no requirement that these model policies are used and each may be adapted to the individual requirements of chambers.

Section 12

13. Section 12 provides a model equality monitoring form that can be used by chambers to collect data on sex, ethnicity and disability during the recruitment of pupils, tenants and staff.

Section 13

14. Section 13 is a directory of organisations and information resources that can provide chambers with further information and support on equality and diversity.

Examples

15. Examples of good practice and 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.

Section 1 - Basic Principles

Introduction

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

Legal requirements

Protected grounds

2. The law¹ 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
 - disability²
 - sexual orientation
 - marriage and civil partnership
 - religion or belief
 - age
 - gender reassignment

¹ The relevant legislation is the Equality Act 2010 (http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_1).

² S.6 (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. 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 legislation³ 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

³ S.47(1) Equality Act 2010 (http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_6#pt5-ch1-pb4-l1q47)

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

8. Protected characteristics

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

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

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

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

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 but also mental impairments such as bi-polar disorder.

- It covers severe disfigurement⁴, progressive conditions⁵ and recurring impairments⁶. Specific rules are made in respect of conditions such as cancer, HIV and multiple sclerosis which are deemed impairments for the purposes of the Act⁷.
- 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 disadvantage⁸. Reasonable adjustments are dealt with in detail in Section 10.

Religion or belief: includes any religious or 'philosophical belief' such as humanism or pacifism, and encompasses discrimination based on the lack of religion or belief⁹.

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 sex¹⁰.

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

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.

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

Age: covers particular ages and also age ranges.¹¹ It does not cover under 18's in service delivery. However, the Code of Conduct prohibits all discrimination on all grounds, so although age discrimination against under 18s is not currently unlawful, it is prohibited by the Code of Conduct.

Types of discrimination – main categories

The main categories of unlawful discrimination are:

Direct discrimination

9. 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
10. With the exception of age discrimination, direct discrimination cannot be justified.
11. Direct discrimination covers combined discrimination: a combination of two relevant protected characteristics, such as discrimination against a person because she is both Asian and female¹³.
12. 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

13. 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.¹⁴

¹¹ S.5 Equality Act 2010

¹² S.13 Equality Act 2010

¹³ S.14 Equality Act 2010

¹⁴ S.15 Equality Act 2010

Indirect discrimination

14. 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. It could be indirect discrimination if all chambers social events took place in the evening which could affect pupils and tenants with primary childcare commitments.

Duty to make adjustments

15. 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.¹⁵

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

Harassment

17. 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.¹⁶

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

19. The motive or intention of the perpetrator may be (but is not invariably) relevant. Harassment is unlawful under equality legislation and is also a crime.

Victimisation

20. 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:

¹⁵ S.20 Equality Act 2010

¹⁶ S.26 Equality Act 2010

- 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

21. 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 disadvantage¹⁷.
22. Positive action may be taken to improve under representation of particular groups in pupillage and tenancy as well as any employed position in chambers.
23. 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.
24. Positive action consists of providing those from groups under-represented in chambers with additional training and encouragement to apply for positions.

Example - Following a chambers monitoring exercise it is discovered that Asian barristers are underrepresented in comparison to the self-employed Bar. Chambers 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.

25. The Attorney General and CPS encourage positive action in their Equality and Diversity Expectation Statements.
http://www.barcouncil.org.uk/assets/documents/Equality_Diversity_Expectations.pdf

¹⁷ S.158 Equality Act 2010

26. The Bar Council's FAQs about both of these Statements explain the positive action provisions in more detail, and can be found at: [AGs Statement\FAQ on AG Equality and Diversity Expectations Statementv2.doc.](#)

Discrimination by people from the same group

27. Individuals from the same group can discriminate unlawfully against each other: a woman can unlawfully discriminate against another woman, or a barrister from one racial group can unlawfully discriminate against another member of that group.

Unintentional discrimination

28. 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 (i.e. employment or provision of services) is likely to amount to unlawful discrimination.

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

Service provision

30. 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 her with services in the same manner and on the same terms as would otherwise be provided.

31. 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.
32. 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.
33. There is an additional duty in relation to disability, to make reasonable adjustments to enable disabled people to make use of a service. This is considered further in Section 10 about 'Providing Services to Disabled People'.
34. 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 10 'Providing Services to Disabled People'.

Section 2 – Conduct Rules Equality Requirements

Conduct Rules - Core Requirement CD7

1. These requirements apply to all barristers whether employed or self employed.
2. CD7 You must not discriminate improperly in relation to any person.
3. **5.1R** You must not, in your professional practice, discriminate improperly 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 religion or belief.
4. **5.2R** You must take all reasonable steps to ensure that in relation to your business:
 - there is in force a written statement of policy on equality and diversity
 - there is in force a written plan for implementing the policy referred to in 5.2R(1).
5. **5.3R** In this section “business” includes your place of work, any business structure through which you may offer your services (including any procurement vehicle which does not itself supply legal services but arrange for barristers to do so) and any recognised body of which you are an employee or manager.
6. **5.4G** Rule 5.2R places a personal obligation on all barristers to take reasonable steps to ensure that appropriate policies are in place. What steps are reasonable will depend, among other things, on your position in the organisation you work in.

For example if you are a Head of Chambers it is likely to be reasonable for you to ensure that the policies required by 5.2R are in place. Self employed barristers must also comply with the specific requirements in the Practising Rules.

7. **5.5G** The equality and diversity good practice guidelines describe the legal and regulatory requirements relating to equality and diversity and provide guidance on how they could be applied in chambers. They are also relevant to all pupils, supervisors and Authorised Training Organisations which will be expected to show how they comply with the guidance as a condition of authorisation. Although the equality and diversity guidelines are not directly applicable to other practising barristers, they provide helpful guidance which they are encouraged to take into account in their professional practice.

Section 3 – Equality and Diversity Officer

Legal Requirements

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

Equality and Diversity Officer Practising Rule

2. Your chambers must have at least one equality and diversity officer.

Guidance

Equality and Diversity Officer

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's Equality and Diversity Advisor whose details may be found in the Directory in Section 13.
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 equal opportunities policy for chambers is adopted, implemented, and 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 chambers equal opportunities 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 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 work is analysed regularly and that any actions necessary to remedy or investigate unfair outcomes are taken.

Section 4 – Recruitment in chambers

Legal requirements

1. The legal requirements set out in Section 1 (Basic Principles) 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 of an applicant 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 made¹⁸
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.

Recruitment Practising Rules

5. The member with lead responsibility for any committee or panel responsible for the selection of members of chambers, pupils, clerks or mini-pupils and at least one member of the selection panel, who may be the same person, must have received recent and appropriate training in fair recruitment and selection processes, except in unforeseen and exceptional circumstances. (This requirement applies from 1 January 2013).
6. Your chambers recruitment and selection processes must use objective and fair criteria.

¹⁸ S.60(1) Equality Act 2010

Guidance

Introduction

7. 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.
8. 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.

Guidance relating to all recruitment and selection in chambers

Selection criteria

9. Recruitment and selection should be underpinned from the outset by objective selection criteria based on key requirements of the job or work in question.
10. Objective selection criteria based on key requirements:
 - enable chambers to focus on the qualities which they require from the successful candidate;
 - promote a consistent and objective approach to candidates by selectors;
 - reduce the opportunity for decisions to be influenced by stereotyping or unwitting prejudice;
 - can be designed so that higher weightings are given to criteria to which greater importance is attached and;
 - can overall increase the chances of chambers selecting the best candidate.
11. Chambers should avoid criteria that are subjective, such as personality-based attributes, or behavioural attributes that cannot fairly be tested at some stage of the selection process.

12. Care should be taken to ensure that requirements do not create a risk of indirect discrimination by potentially putting some groups at an unjustifiable disadvantage relative to others. For example a requirement for a driving licence could disadvantage some disabled candidates. If such criteria do put certain groups at a disadvantage, and cannot be shown to be a proportionate means of achieving a legitimate aim, they will constitute unlawful indirect discrimination.

The selectors

13. All recruitment should be carried out by more than one person, except in sole practices. The panel of people responsible for a particular recruitment exercise should be determined at the start of the recruitment process, and should where possible have responsibility for running it from start to finish.
14. It is clearly not possible to establish selection panels that include representatives of all groups. But if possible the panel should not be completely homogeneous e.g. three non-disabled white men of similar age. A diverse interview panel may help to reassure an applicant that he or she will be treated fairly, even if the panel does not include representatives of the group with which the candidate may identify most strongly.
15. Panels should not include any relative or close friend of any candidate.
16. It is good practice for the Chair of any Committee or Panel responsible for the selection of tenants, pupils, and mini-pupils to have received recent and appropriate training in fair recruitment and selection methods. Where possible it is recommended that all of those involved in conducting interviews or selection exercises receive such training. This has the benefit of increasing the likelihood of chambers selecting the best available candidates. The training should focus on good practice in recruitment and selection and alert selectors to the ways in which fair selection can be undermined, for example, by stereotyping, first impressions, or a preference to those that are similar to themselves.

Advertising/seeking applicants

17. It is good practice generally to ensure that vacancies are made known to a wide range of potential applicants, so the choice of advertising media should take account of the extent to which advertisements are likely to reach those from different groups, such as ethnic minorities, disabled people and people from different age groups.

18. Care should be taken to ensure that advertisements could not be seen as indicating an intention to discriminate on any of the protected grounds.

19. It is good practice to include in advertisements:

- encouragement of applications from groups which are under-represented in chambers;
- a statement of compliance with these Guidelines;
- a statement indicating preparedness to make reasonable adjustments for disabled candidates.

Application forms

20. An application form is generally preferable to a curriculum vitae (CV). 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. It also makes it less likely that selectors will see information that is best kept separate, such as that relating to age or family commitments.

21. Chambers should be aware of the possible need, and their duty, to make reasonable adjustments for disabled applicants at this stage, for example by providing forms in a format that is accessible to individual disabled applicants.

Short-listing

22. Short-listing should be carried out by more than one person, and by reference to the selection criteria determined at the outset.

23. Suitable arrangements should be made for short listing decisions to be moderated if shortlisters cannot agree.

24. The detachable section of the application form with monitoring and other equality-relevant information should be removed by someone not involved in the selection process before short-listing begins.

Interviews

25. Chambers should ensure that any reasonable adjustment required for a disabled candidate has been made so that disabled candidates are not disadvantaged at interview.
26. 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.
27. The preamble to the interview should introduce the panel, and the areas about which they will be asking questions, and explain what the sequence of the interview will be.
28. It is not essential to ask each candidate identical questions, but a planned sequence of topics is recommended. Different questions should not be asked of those of a particular group (e.g. sex or racial group) as this could constitute direct discrimination.
29. Irrelevant questions, such as personal questions in relation to family and personal background should be avoided. So should questions about marital or familial intentions. Where a disabled candidate may need reasonable adjustments to enable them to practise from a particular chambers, these should be discussed once it has been decided to make an offer to the candidate. The possible need for such adjustments should play no part in the decision.
30. Selectors should be aware that their facial expressions and body language may have the effect of encouraging or discouraging candidates, and the impact of their behaviour may be greater for some groups than others, for example those with past experience of discrimination may be more sensitive to 'negative' body language.
31. Selectors should score candidates individually against each criterion on an agreed scale and should then compare their scores with others on the panel so as to seek to reach a consensus, which should be recorded by the chair of the panel, without the original individual scores being changed. The panel should, where possible, reach a consensus on the overall score for the candidate, taking into account any weightings assigned to particular criteria because of their relative importance, as determined at the start of the recruitment procedure.

Selection exercises

32. It is strongly recommended that standard exercises either in written form or by way of oral presentation are used alongside interviews to assess candidates. Where such exercises accurately reflect the skills needed by barristers they can be excellent predictors of future performance. In relation to pupils and starter tenants, such exercises should be designed in such a way that any area of law covered is one with which all candidates are likely to be familiar. Alternatively, a topic may be chosen which requires no prior specialist legal knowledge but is designed to test analytical or advocacy skills.
33. Chambers should be aware of the need to make reasonable adjustments to selection exercises for disabled candidates on request.

References

34. Where references are sought, a standard form should be used, and referees should be directed as to the selection criteria, and the type of information sought from them. References should be requested and provided in writing.

Selection decisions

35. Selection decisions should be based on the final agreed scores recorded by the selection panel, supplemented by any information subsequently obtained from referees. 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 justifiable and substantiated.

Record keeping

36. 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.
37. Records relating to advertising of vacancies and applications should be retained for a year. Successful applicants' documents should be transferred to chambers files in any event.

Guidance relevant to particular categories

Pupillage

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

Mini-pupillages

39. In chambers where successful completion of a mini-pupillage positively influences an individual's subsequent selection for pupillage, such mini-pupillages should be advertised and a formal selection process used.
40. Chambers should be aware of the need to make reasonable adjustments in mini-pupillage for a disabled mini-pupil.
41. Many students rely on income earned during university holidays, and a formal requirement that all applicants for pupillage undertake an assessed mini-pupillage may make it difficult for those from economically disadvantaged groups to apply for pupillage. This is particularly so if many chambers undertaking a particular type of work impose a similar requirement, as a student may be required to undertake an assessed mini-pupillage, usually of a week, at each chambers.
42. Chambers are encouraged to offer more mini-pupillages, including those for shorter periods (2 to 3 days, rather than the more usual full week), and to consider offering funding for travel and accommodation expenses of those undertaking mini-pupillages.¹⁹ In addition, chambers are encouraged to publicise mini-pupillages to those from socially and economically disadvantaged groups who may not be aware that they are available.²⁰ Chambers may also wish to consider reserving a number of places for students who have not previously undertaken a mini-pupillage.

¹⁹ The Final Report of the Entry to the Bar Working Party, published in November 2007 (chaired by Lord Neuberger), recommended that: 'Chambers should be encouraged to offer more mini-pupillages, including those for shorter periods (2-3 days, rather than the more usual full week). Consideration should be given to obtaining funding for travel and accommodation expenses of those attending mini-pupillages.' (Recommendation 12). See also paragraph 115 of the Report.

²⁰ See the Final Report of the Entry to the Bar Working Party, published in November 2007 (chaired by Lord Neuberger), paragraph 116.

43. Application procedures should be transparent: chambers should state whether applications are by means of a CV or an application form, if mini-pupillages are offered or applications considered at particular times of year, and whether mini-pupillages are assessed.
44. Where mini-pupillages are assessed, the same or equivalent assessment exercise or exercises should be provided to all candidates, and the exercises should be assessed by at least two assessors applying the same criteria.

Starter tenants

45. Every chambers which recruits starter tenants should have a policy in relation to their recruitment. The policy should be made available to members of chambers and to pupils when they begin their pupillage.
46. Chambers should identify, preferably at a specified time each year, how many starter tenants they wish to recruit. Chambers should, with the assistance of the senior clerk, practice director or similar, so far as possible determine the quantity and the nature of work available, or potentially available, for starter tenants.
47. Starter tenancies should be advertised where chambers do not recruit exclusively from among their own pupils.

Established practitioners

48. Vacancies for established practitioners should normally be advertised. However, chambers may identify, or be approached by, individuals or groups of established practitioners with particular experience or expertise in chambers field(s) of practice. Chambers should be aware that targeted recruitment may give rise to allegations of discrimination. However, it may be legitimate to recruit without advertisement provided that such recruitment can be justified both in terms of the chambers real business needs and in terms of the skills of those recruited.

Employees

49. 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 and Business Link.

Section 5 – Equality monitoring

Legal requirements

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

Equality Monitoring Practising Rules

2. Your chambers must regularly review:
 - (a) the number and percentages of barristers and pupils from different groups;
 - (b) applications for mini-pupillage, pupillage, and membership of chambers;
 - (c) the allocation of work to pupils, barristers of less than four years' standing and barristers returning from parental leave.
3. This review must include, but is not limited to:
 - (a) collecting and analysing data broken down by race and gender;
 - (b) investigate the reasons for any disparities in that data; and
 - (c) 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.

Deciding on which grounds to monitor

5. The regulatory requirement is that chambers must monitor race and sex as a minimum. Chambers are encouraged to consider monitoring across the other protected grounds where they believe the results would be useful in supporting their work on equality and diversity.

Anonymous monitoring

6. For the purposes of monitoring recruitment and selection and work allocation, it is important that monitoring data should not be anonymous; it should be possible to link the equality data relating to race and sex 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 equalities data. However 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.
7. However sometimes anonymous monitoring may produce a better response rate. Anonymous surveys may for example enable chambers to assess the number of lesbian, gay or bisexual barristers and staff, and to correlate this with other information sought at the same time, for example about work satisfaction, or experience of harassment. Set against this advantage is the potential to exacerbate perceptions that lesbian gay or bisexual members of chambers should keep their sexual orientation secret.

8. In the case of disability it may be helpful to carry out anonymous surveys as well as non-anonymous data collection. This may highlight a discrepancy between self-declared disability rates for anonymous and non-anonymous data, and the need for further efforts to reassure people about confidentiality. Any substantial discrepancies may indicate a need to interpret the non-anonymous monitoring data with caution.

Collecting monitoring data

9. Equalities data on individuals should be collected using a detachable section of the application form or on a separate monitoring form. A model monitoring form for chambers is provided in Section 12.
10. 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.
11. 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 needs for reasonable adjustments related to their recruitment, employment 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.

How to Monitor

12. Monitoring is an active exercise to identify discrepancies in how work is being allocated within chambers so that these can be investigated.
13. Chambers should consider keeping a database of work, of pupil and junior tenants and those returning from parental leave. The patterns that need to be considered are earnings, quantity of work and sources of work.
14. Most if not all chambers will already keep data on earnings, so the first issue for monitoring is to see whether men at a particular call are earning significantly more than women or BME barristers.

15. In terms of source of the work for pupils and junior tenants this is relatively straightforward. Chambers simply has to record whether the work came into chambers marked for that barrister/pupil, or whether it was allocated and if so, who was responsible for allocating the work. This exercise should pick up patterns of work allocation.
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. Chambers also should consider monitoring the allocation of work to disabled pupils and junior tenants and disabled members returning from parental leave.
18. 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.

Example - The Equality and Diversity Officer and the senior clerk review the 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.

19. 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.

Application stage

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

Shortlisting

22. 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 short listing rates should be investigated.

Interview stage

23. 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. Training interviewers in fair recruitment should be considered if disparities are identified in analysis of interview monitoring data. Exercises used at this stage should be reviewed if the analysis suggests that they are contributing to disparities.

Overall

24. 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.

Monitoring membership of chambers

25. The equalities data needed for this exercise should be collected when individuals apply for or join chambers. Where this information is not available for existing members or employees, the data should be gathered by means of an internal survey. This exercise may need to be repeated from time to time to top up the data, or to allow for it to be changed or corrected, although this should not preclude the making of changes at other times at the request of the data subject.

Monitoring work allocation

26. Monitoring the allocation of work is considered in section 6 on Fair Access to Work.

Data Protection requirements

27. All data collection, storage, analysis and publication should be carried out in full compliance with the requirements of the Data Protection Act (DPA) relating to the processing of personal information and the processing of sensitive personal information. The data gathered in equality monitoring falls into this category. Consequently, the data collected from monitoring should be stored in a secure manner. Access to the information should be restricted to only those members of chambers and staff with a legitimate need to know, so as to maintain confidentiality. Data should only be gathered for lawful and specified purposes. This highlights the importance of ensuring that there is a detailed statement given as part of data collection explaining how equalities data will be used.
28. Data should not be published in a way that makes it possible for an individual to be identified, without that individual's permission. It is particularly important to remember this when the number of people reported on is low.
29. Chambers should note that serious breaches of the data protection principles under the DPA which are likely to cause substantial damage or distress, and which are committed deliberately or recklessly, may result in a fine of up to £500,000.

Section 6 – Fair Access to Work

Legal requirements

1. 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.

Fair Access to Work Practising Rules

4. The affairs of your chambers must be conducted in a manner which is fair and equitable for all members of chambers and pupils. This includes, but is not limited to, the fair distribution of work amongst pupils and members of chambers.

Guidance

Introduction

5. The guidance below relates to four issues: 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 take 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. Solicitors are subject, in relation to the instruction of a barrister, to statutory provisions relating to the giving, withholding or acceptance of instructions on grounds of race, sex, disability, religion or belief, sexual orientation or age, and to the provisions of Rule 6 (Equality and Diversity) of the Solicitors' Code of Conduct 2007.
11. The Guidance accompanying the Solicitors' Code of Conduct Rule 6.01 ('Duty not to discriminate') includes the following:
- *'15. You should instruct barristers on the basis of their skill, experience and ability and it is unlawful to instruct them, or avoid instructing them, on the basis of any of the grounds in 6.01, or to request or encourage a barrister's clerk to do so.'*
 - *16. You should normally comply with a client's request to instruct a named barrister (subject to your duty to discuss the suitability of that barrister for a particular type of work). Where a client's instructions as to the choice of barrister are based on any of the grounds in 6.01, you should encourage the client to modify their instructions. If they refuse to do so, you should cease to act for them as aiding an unlawful act is prohibited.'*
12. Chambers should ensure that their clerks are aware of this rule and the code's requirement that work is distributed fairly, and that clerks understand their importance.
13. Clerks may receive requests that are discriminatory, for example requests for barrister of a particular sex or race for a particular piece of work.

14. Faced with such requests, clerks should explain that they are unlawful and in breach of the Solicitors' Code of Conduct. 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: the Solicitors' Code requires the solicitor to encourage the client to modify his/her instructions, and to refuse to act for the client if the client refuses. 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.

15. 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, and the solicitor should be reported to his or her professional disciplinary body. The work should be refused, and the clerk should make a full note of the incident immediately.

Practice development

16. 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.
17. 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

18. 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.
19. 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 7 – Harassment

Legal requirements

1. Harassment is a form of unlawful discrimination. It is any form of unwanted conduct which has the aim or effect of violating a person's dignity, or which creates an intimidating, hostile, degrading, humiliating or offensive environment for that person (or, in some cases, a witness to the conduct), for reasons relating to sex, race, gender reassignment, disability, sexual orientation, religion or belief, or age.
2. Harassment on the grounds of race, sex, sexual orientation, gender re-assignment, disability, age, religion or belief is unlawful.

Anti-Harassment Practising Rules

3. Your chambers must have a written anti-harassment policy which must:
 - (a) state 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;
 - (b) set out how the policy will be communicated;
 - (c) set out the procedure for dealing with complaints of harassment.

Guidance

Guidance about the legal requirements

4. Harassment gives rise to particular issues because behaviour that one person may be able to ignore or deal with comfortably may nevertheless constitute harassment 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. The motive or intention of the perpetrator may be (but is not invariably) relevant. Harassment is unlawful under the discrimination legislation and also constitutes a criminal offence.

Example - Chambers employs a former clerk, who retired at the age of 65, to carry out various administrative tasks. When he comes into the clerks' room, the clerks call him 'granddad' and make jokes about his free travel pass. He finds it humiliating to have his age constantly referred to in this way, but he feels that he has to go along with the 'joke' and so says nothing. The clerks' behaviour is likely to be unlawful and chambers', as the employer, is likely to be vicariously liable for this unlawful harassment.

Dealing with harassment

5. Those experiencing 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 should be able to alleviate the problems of harassment in the context of work related relationships.
6. In particular, the following are recommended:
 - active promotion of chambers harassment policy by people in managerial positions;
 - training for those in managerial and supervisory roles on how to keep the work environment free of harassment and how to deal with it should it occur;

- the provision of informal means of resolving complaints of harassment in the first instance;
 - the designation of an adviser to assist employees and others subjected to harassment. (This is a role which may be carried out by the chambers Equality and Diversity Officer);
 - 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.
7. A person who is being harassed often just wants the harassment to stop and does not wish to see the harasser disciplined. In these circumstances, chambers should make an independent assessment of the situation to decide whether disciplinary action should be taken.
8. With support from the designated adviser (who may be the chambers Equality and Diversity Officer), the person who is experiencing harassment may wish to tell the harasser that his or her behaviour is unacceptable and ask him or her to stop immediately, or he or she may wish to do this indirectly through the designated adviser or another person. Advice may also be sought from the Bar Council's Equality and Diversity Advisor (for contact details, see the Directory at Section 13).

Harassment policy

9. A model chambers harassment policy is set out at Section 11.
10. Written policies and procedures should be reviewed regularly and at least every two years.

Section 8 – 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 Business Link website at: <http://www.businesslink.gov.uk>. Self employed barristers are not covered by these provisions.

Regulatory requirements

3. Your chambers must have a parental and adoption leave policy which covers:
 - (a) 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.
 - (b) The extent to which a member of chambers is or is not required to contribute to chambers’ rent and expenses during parental leave. This includes, but is not limited to, the method of calculation of any waiver, reduction or reimbursement of chambers’ rent and expenses during parental leave.
 - (c) The procedure for dealing with grievances under the policy.
 - (d) Chambers’ commitment to review regularly the effectiveness of the policy.
4. Your chambers must offer its members a minimum of 6 months parental leave, or leave following adoption.
5. Where rent is paid on a flat rate basis, your chambers must offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers’ rent.

Guidance

Introduction

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

Rent-free periods

7. 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 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.
8. Parental leave policies may need to cover matters such as clerks' fees, mortgage repayments 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 decides to adopt the recommended six month rent free period but not to extend this to the mortgage repayments.

10. A policy should allow the flexibility for a longer rent-free period. At the same time, a constructive 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 maternity leave for six months. Her chambers charges a fixed rent and a contribution calculated as a percentage of individual receipts. Chambers has a policy which makes clear that informal working arrangements during maternity 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 maternity leave, usually working from home on days when a family member can assist with child care. This enables her to build up her practice much more quickly when she returns to chambers. Her contributions to chambers are also correspondingly increased after the end of the six month rent-free period.

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

Right to return to chambers

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

- 12 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.

13 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.

14 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

15 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 and expenses. 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

16 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

17 A model chambers parental leave policy is set out at section 11.

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](#)
- Information about 'keeping in touch days' can be accessed via the Directgov [website](#)
- Information regarding claiming statutory maternity allowance can be found at the Directgov website <http://www.direct.gov.uk>

Section 9 – 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 Business Link website at:
<http://www.businesslink.gov.uk>.
2. However, most barristers are self-employed and so are not covered by these provisions.

Flexible Working Practising Rules

3. Your chambers must have a flexible working policy which covers the right of a member of chambers to take a career break, to work part-time, to work flexible hours or to work from home to enable them to manage their family responsibilities and remain in practice.

Guidance

Advantages of flexible working arrangements

4. 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 the policy

5. The Bar is ideally suited to flexible working. Solicitor 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 child care 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.

6. 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.
7. 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.
8. Members of chambers working on flexible working arrangements should be given opportunities to take part in all aspects of chambers activities, including continuing professional development, marketing and social activities, and 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, and 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.

9. 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 10 - Providing services to disabled people

Legal requirements

1. It is unlawful to discriminate against someone, because of a protected characteristic, by refusing to provide a service, providing a lower standard of service, or offering a service on different terms than to other people. This includes disability as well as other protected grounds.
2. The Equality Act 2010 strengthens the existing duty to make reasonable adjustments²¹. 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 made²².

²¹ S.20 Equality Act 2010

²² S.20 (7) Equality Act 2010

Guidance

Introduction

4. 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 this code.
5. This guidance is not a substitute for training. Chambers should provide training in equality and diversity issues to all members of chambers, staff and pupils. 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 this code. This review should extend to services which are provided to or on behalf of chambers by external service providers such as IT consultants and web designers.
6. Further information and advice is available from the sources listed in the Directory.²³

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.

²³ See also the guidance document 'Making Chambers Accessible', which is available from the Guidance section of the Bar Council website.

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.

8. If chambers make 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.

9. 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.
10. 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 effect. ... In considering what is reasonable, you may consider factors such as your organisation's financial resources: generally, more is expected of larger organisations.*"

11. 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.

Section 11 – Model policies

Model Harassment Policy

This is a model chambers harassment policy. For further information, see Section 7 on Harassment.

1. [Name of Chambers] is committed to providing a work environment in which all individuals, clients and the public are treated with dignity and respect. [Name of Chambers] is determined to promote a work environment in which everyone is treated equally and with dignity and can flourish.
2. Harassment in any form will not be tolerated at [Name of Chambers]. Harassment includes behaviour which causes offence or distress to another and which is perceived by that person as relating to or arising from sex, race, disability, pregnancy and maternity, gender re-assignment, religion or belief, marriage/civil partnership, sexual orientation or age. Such behaviour may take many forms including:
 - conduct which is unwanted by the recipient and perceived as hostile or threatening;
 - conduct which gives rise to a hostile or threatening work environment;
 - conduct which creates an atmosphere in which it is feared that rejection or submission will be used as a basis for decisions which have an impact on the recipient at work such as an allocation of work or tenancy decision.
3. The following are examples of types of behaviour which may amount to harassment:
 - physical or sexual assault;
 - requests for sexual favours in return for career advancement;
 - unnecessary physical contact;
 - exclusion from social networks and activities or other forms of isolation;
 - bullying;

- compromising suggestions or invitations;
 - suggestive remarks or looks;
 - display of offensive materials, including on a computer screen;
 - tasteless jokes or verbal abuse, including any sent by email;
 - offensive remarks or ridicule;
 - dealing inappropriately or inadequately with complaints of harassment.
4. Complaints of harassment may be raised informally in the first instance with [Name of Chambers Equality and Diversity Officer], the head of chambers or another senior member of chambers who will agree an appropriate response. Formal complaints should be made under the [Name of Chambers]' grievance procedure.
 5. Harassment is misconduct for employees or a breach of the Bar Code of Conduct for barristers. Allegations of harassment will be dealt with under the [Name of Chambers]' disciplinary procedure.
 6. Chambers is committed to ensuring that no-one who makes an allegation of harassment in good faith should be subjected to any detriment as a result. Any victimisation of a complainant, witness or anyone else involved in the investigation of a complaint will be viewed as a disciplinary matter.
 7. A copy of this policy is provided to all those for whom chambers constitutes a working environment, including members of chambers, pupils, squatters, clerks and other employees, temporary workers, those who provide services to chambers such as contract cleaners, accountants and IT consultants, and mini-pupils and work experience students.
 8. This policy was adopted on [date] and will be reviewed on [date].

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 8 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 a minimum of six months parental or adoption leave 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 the same period free of chambers rent and expenses²⁴.
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 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 births²⁵.
12. Where membership ceases by virtue of the provisions in paragraph 9, a member can re-apply to chambers in the usual way.

Arrangements During Leave²⁶

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

²⁴ The 6 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.

²⁵ Chambers are encouraged to offer a longer period than the year required by the Code of Conduct.

²⁶ For further guidance and information please see the Bar Council maternity leave and career break checklist on the Bar Council website ([Maternity Leave Information](#))

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.

Undertaking work during leave

15. (FLAT RATE) Informal working arrangements during a period of parental leave do not affect a member’s entitlement to a six month period free of rent and expenses, 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

Section 12 – Model equality monitoring form

1. The following model equality monitoring form can be adapted by chambers for use in monitoring recruitment or conducting an internal survey. The questions are based on those recommended by national equalities bodies to enable chambers to compare themselves against Bar, BPTC student and other relevant statistics.
2. Equality monitoring data should be treated as confidential and should not be available to members of the selection committee at any stage of the recruitment process. The form should be printed on a separate sheet and then separated from the application before this is passed to those involved in the selection of candidates.
3. Chambers will need to record equalities data by candidate so that recruitment outcomes can be monitored at application, shortlisting and offer stages. It is therefore critical that the data is held securely and that access is restricted to those members of chambers, such as the Senior Clerk, who are directly involved in analysing the results.
4. In addition to the monitoring questions, a question is included asking whether candidates need any reasonable adjustments due to a disability or medical condition. Chambers should ensure that any requests for adjustments are followed up and discussed in advance with the applicant to identify what adjustments can be made to the recruitment process.

Recruitment Monitoring Form

Strictly Private & Confidential

Candidate Reference: XYZ123

XYZ Chambers wishes to ensure that we are able to recruit, develop and retain the most talented barristers, pupils and staff to our chambers. We value the diversity of backgrounds, skills and experiences found in our chambers, and actively promote an inclusive culture where all our members and staff are able to flourish.

As part of meeting our commitments to equality and diversity, our chambers collects and analyses statistical information on all those that apply for positions here. This enables us to ensure that we continue to attract and select our pupils and members solely on the basis of talent and their potential to succeed.

The information that you are asked to provide in the section below will be treated in the strictest confidence. The information requested covers those areas covered by the Equality and Diversity Code for the Bar and equalities legislation. It will be held confidentially by the Senior Clerk and will be used solely for statistical monitoring purposes. You are not obliged to provide this information but in doing so you will help us to ensure that our recruitment is fair and objective for all.

Section 1 : Sex

Please tick a box below to indicate whether you are:

Male ☐

Female ☐

Section 2: Ethnic Group

What is your ethnic group? Choose ONE section from A to E, then tick the appropriate box to indicate your ethnic group.

White

White British ☐

White Irish ☐

Any other White Background
(please write in) _____

Mixed

White & Black African ☐

White & Black Caribbean ☐

White & Asian ☐

Any other Mixed background
(please write in) _____

Asian or Asian British

Asian Indian ☐

Asian Pakistani ☐

Asian Bangladeshi ☐

Any other Asian background
(please write in) _____

Black or Black British

Black African ☐

Black Caribbean ☐

Any other Black background

(please write in) _____

Chinese or Other Ethnic Group

Chinese ☐

Any other ethnic group

(please write in) _____

Section 3: Disability

Do you consider yourself to have a disability?

(The Equality Act 2010 defines a person as having a disability if he or she has a physical or mental impairment, which has a substantial long term, adverse effect on his or her ability to carry out normal day-to-day activities. "Long term" means that the impairment is likely to or has lasted for 12 months or more).

Yes ☐

No ☐

Please let us know below if you need any reasonable adjustments to the recruitment process. If you wish to discuss any particular requirements or concerns you have related to a disability or medical condition please contact [contact name and telephone]. This information will not be used in the selection process.

Please specify:

Section 13 – Directory

This section lists organisations and information resources in the field of equality and diversity. Please email the Equality and Diversity Administration Officer with any corrections, updates or suggestions for additions: ACampbell@BarCouncil.org.uk

Bar Council Equality and Diversity Adviser

Email: PBhalla@BarCouncil.org.uk

Confidential helpline: 020 7611 1310

Open to practising barristers, pupils and law students

Bar Code of Conduct

Website: www.barstandardsboard.org.uk/standardsandguidance/codeofconduct

Equality and Diversity Code for the Bar

Website: www.barstandardsboard.org.uk/standardsandguidance/eanddcode

ACAS

Website: www.acas.org.uk

Information and advice on employment and discrimination law

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

Department for Business, Innovation and Skills

Website: www.bis.gov.uk

Telephone: 020 7215 5000

Discrimination Law Association

Website: <http://www.discriminationlaw.org.uk>

Telephone: 0845 478 6375

The Employers Forum on Age

Website: www.efa.org.uk

Information for employers about law and good practice in relation to age

The Employers Forum on Belief

Website:

www.efrb.org.uk

Information for employers about law and good practice in relation to religion, belief and non-belief

The Employers Forum on Disability

Website: www.employers-forum.co.uk

Information for employers about law and good practice in relation to disability

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

Helpline: England 0845 604 6610; Wales: 0845 604 8810

The Gender Trust

Website: <http://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 whose lives are affected by gender identity issues.

Helpline: 0845 231 0505

Jobcentre Plus

Website: <http://www.jobcentreplus.gov.uk>

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.

Judicial Studies Board

Website: www.jsboard.co.uk/etac

Equal treatment resources

LawCare

Website: www.lawcare.org.uk

Helpline: 0800 018 4299

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.com

Email: info@societyofasianlawyers.com

Society of Black Lawyers

Website: <http://blacklawyer.org>

Stonewall

Website: <http://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

Email: UKAJLJ@jewishlawyers.co.uk

Telephone: 020 8958 6110