

2022

THE BAR EQUALITY, DIVERSITY  
AND INCLUSION DIRECTORY

This Directory was created for the promotion of a culture of inclusivity at the Bar by nine barristers in private practice as part of the 2021 Bar Council Leadership Programme:

Andrew Powell

Bo Kay Fung

Chris Gutteridge

Francesca O'Neill

Khadija Leuenberger

Laura Bayley

Lydia Pemberton

Narinder Jhittay

Susanna Rickard

# Contents

About the Bar EDI Directory 2022.....	5
Foreword by Amanda Pinto QC, Chair of the Bar Council 2020 .....	6
Executive summary .....	7
Guiding principles .....	8
Key provisions of the Equality Act 2010 .....	9
Age .....	10
Overview .....	10
Specific regulatory / legislative requirements .....	10
Existing frameworks, materials and resources for the Bar .....	11
Other commendable practice beyond the Bar .....	11
Overview of themes / best practice.....	12
Bullying and harassment.....	13
Overview .....	13
Legislative Requirements .....	13
Regulatory Requirements .....	14
Existing frameworks, materials and resources for the Bar .....	15
Caring responsibilities, parental leave and retention of women .....	19
Overview .....	19
Specific regulatory / legislative requirements .....	20
Existing frameworks, materials and resources for the Bar .....	22
Other commendable practice beyond the Bar .....	23
Themes / best practice.....	23
UK-based legal networks open to the Bar .....	25
Disability, neurodiversity and reasonable adjustments .....	26
Overview .....	26
Specific regulatory / legislative requirements .....	26
Existing frameworks, materials and resources for the Bar .....	29
Other commendable practice beyond the Bar .....	30
Themes/best practice .....	31
Fair allocation of work .....	33
Overview .....	33
Legislative requirements.....	33
Regulatory requirements .....	33
Existing Frameworks, Materials and Resources for the Bar .....	36

Commendable practice beyond the Bar .....	37
Themes/best practice .....	38
Flexible working, part-time working and career breaks .....	40
Definitions .....	40
Overview .....	40
Legislative requirements.....	41
Regulatory requirements .....	41
Existing frameworks, materials and resources for the Bar .....	42
Relevant articles:.....	42
Other commendable practice beyond the Bar .....	43
Themes/best practice .....	44
Networks/groups: .....	46
Gender and sex .....	47
Overview .....	47
Specific regulatory/legislative requirements.....	48
Existing frameworks, materials and resources for the Bar .....	51
Other commendable practice beyond the Bar .....	53
Themes/best practice .....	53
LGBTQI+ and gender re-assignment .....	56
Overview .....	56
Legislation .....	56
Regulation .....	57
Existing frameworks, materials and resources for the Bar .....	58
Other commendable practice beyond the Bar .....	58
Themes/best practice .....	59
UK-based legal networks open to the Bar .....	60
Mental health and wellbeing .....	61
Overview .....	61
Specific regulatory and legal requirements .....	61
Guidance .....	61
Best practice.....	62
Other Sources .....	63
Race and religion.....	64
Overview .....	64
Specific regulatory/legislative requirements.....	64
Existing frameworks, materials and resources for the Bar .....	65

Other commendable practice beyond the Bar .....	66
Themes/best practice .....	68
Recruitment and social mobility .....	72
Overview .....	72
Specific regulatory/legislative requirements.....	72
Existing frameworks, materials and resources for the Bar .....	73
Other commendable practice from beyond the Bar .....	75
Themes/best practice .....	76

# About the Bar EDI Directory 2022

This Directory was created for the promotion of a culture of inclusivity at the Bar by nine barristers in private practice as part of the inaugural 2020-2021 Bar Council Leadership programme:

Laura Bayley, Crucible

Bo Kay Fung, Financial Conduct Authority

Chris Gutteridge, Exchange Chambers

Narinder Jhittay, Maitland Chambers

Khadija Leuenberger, The 36 Group

Francesca O'Neill, 1 Chancery Lane

Lydia Pemberton, 3 Paper Buildings

Andrew Powell, 4PB

Susanna Rickard, Serjeants' Inn Chambers

# Foreword by Amanda Pinto QC, Chair of the Bar Council 2020

As Chair of the Bar Council for 2020, the year of the inaugural Bar Council Leadership Programme, it is a real pleasure to be asked to write the foreword to the Equality, Diversity and Inclusion Directory. It is one of several initiatives emanating from the Programme which will undoubtedly help to change the Bar for the better. The Directory provides an important, up to date resource, setting out clearly and in one place, where barristers, Chambers and others can find guidance on a wide range of essential topics, to ensure that the profession adopts and embraces better practices. As many call for the Bar to represent more closely the society we serve, this is a timely resource for those wishing to improve the culture of our profession for everyone. I thank the authors for their work in making this living, accessible and comprehensive Directory available to all and look forward to watching the positive impact it will have.



# Executive summary

It is important that the Bar is representative of wider society. Promoting equality, diversity and inclusion at the Bar is key to achieving this objective and to building a successful profession for the future.

For too long, the Bar has given the impression of being elitist, and overwhelmingly male.

The statistics bear this out: for those barristers still in practice after 15 years, approximately 70% are men, and female and BAME barristers earn less on average than male and White barristers of the same seniority in the same practice area.<sup>1</sup> Unless and until the profession takes concrete steps to overcome the obstacles to equal treatment, the Bar will fail to adequately serve the community that requires its services.

Attracting the best talent and candidates from the widest possible pool also has strong commercial advantages for chambers and their lay and professional clients. To embed sustainable and positive change in this regard, embracing a change in culture at the Bar is necessary. This culture change requires a commitment from all stakeholders in the profession: chambers, individual barristers, clerks and judges to champion a range of schemes designed to advance equality, diversity and inclusion at the Bar.

The basic requirements in the equality legislation and the BSB's Equality and Diversity rules provide the minimum standards that all chambers must adopt to avoid unlawful discrimination, harassment, victimisation and failure to make reasonable adjustments.

However, these requirements are a bare minimum and much more is required to demonstrate a commitment to equality, diversity and inclusion. The Bar can, and should, aim much higher. Only by doing so can it harness its true potential.

This Directory creates an overarching framework across 11 areas of equality, diversity and inclusion. It seeks to provide easy access to the key objectives and relevant resources in each area. Each area is covered under a separate section of the Directory.

The different sections provide an overview, state the minimum legislative and regulatory standards, draw together resources from existing equality, diversity and inclusion initiatives, highlight other commendable practices beyond the Bar and set out an overview of themes and best practices.<sup>2</sup>

The Directory is intended to act as a substantial time-saver for any stakeholder in the profession seeking to obtain an overarching perspective of the requirements and action needed to achieve a positive shift in the Bar's culture. Importantly, it is hoped that the Directory will assist chambers in adopting greater measures across the spectrum in promoting equality, diversity and inclusion at the Bar. Whilst there can never be a uniform approach to achieving this objective, the guiding principles that follow may assist in paving the way.

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<sup>1</sup> BSB *Income at the Bar by Gender and Ethnicity* Research Report, November 2020

<sup>2</sup> The information in this Directory is up-to-date as of November 2021

# Guiding principles

1. **Pledging** – to implement desirable standards and targets across the different areas by voluntarily pledging to incorporate these standards in a manner that is achievable and works best for individual chambers and organisations.
2. **Championing** – all stakeholders can play an active role in championing equality, diversity and inclusion principles and initiatives through implementation of the recommendations and providing a voice for under-represented groups.
3. **Senior Level Commitment** – from Heads of Chambers, senior members, Head clerks, CEOs etc. to promote values and provide visible leadership in achieving objectives.
4. **Governance** – embedding equality, diversity and inclusion into the governance structures and decision-making processes of chambers and organisations. Setting up working groups to look at best practices.
5. **Policies** – to advance equality, diversity and inclusion objectives and ensure standards of fairness and compliance.
6. **Data capture** – to track progress towards achieving goals. Collecting and reviewing data also provides the opportunity to address anomalies across different areas and monitor impact.
7. **Training** – equality, diversity and inclusion training for all stakeholders, from senior to junior level, in order to promote awareness and achieve greater participation.
8. **Transparency** – in all aspects of equality, diversity and inclusion objectives, targets, decision-making and initiatives within chambers and organisations to allow scrutiny and facilitate progress.
9. **Communication** – in the form of non-onerous internal and/or external reporting to highlight key achievements and enable reflection. Creating a safe space for open communication and shared experiences.
10. **Partnering** – working together across the Bar with stakeholders in other chambers, and with external organisations, to advance equality, diversity and inclusion at the Bar more widely.



# Key provisions of the Equality Act 2010

Section 4 recognises nine '**protected characteristics**' for safeguarding against discrimination: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Each protected characteristic is defined in turn within sections 5 to 12.

Section 13 prohibits **direct discrimination**: where a person is treated less favourably than others because of a protected characteristic. Section 14 prohibits discrimination against a person because of a combination of two protected characteristics.<sup>3</sup>

Section 19 prohibits **indirect discrimination**: where a 'provision, criterion or practice' is discriminatory in relation to a protected characteristic. Indirect discrimination occurs when a policy which applies in the same way for everybody has an effect which particularly disadvantages people with a protected characteristic.<sup>4</sup>

Section 47 contains specific provisions relating to **barristers and barristers' clerks** including specific prohibitions of discrimination, victimisation and harassment in a chambers setting.

The Act permits **positive action** to be taken in specified circumstances. Under section 158 where a person reasonably believes that persons with a shared protected characteristic suffer a disadvantage, have particular needs or are disproportionately under-represented, they may take any step to encourage or enable that group to overcome or minimise the disadvantage. The Bar Council has produced [a guide in relation to positive action measures](#).

For further information about the Act, see [the supporting information for the BSB Handbook Equality Rules](#) which outlines the legal (as well as regulatory) obligations of chambers and BSB entities.

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<sup>3</sup> The prohibitions contained in s.13 and s.14 are subject to certain limited exceptions contained within each section.

<sup>4</sup> [Equality Act 2010 - Explanatory Notes \(legislation.gov.uk\)](#)

# Age

## Overview

Diversity in age brings with it diversity of experience, which should be welcomed across the Bar. Minimising the risk of age discrimination requires organisations to take a holistic view to things such as recruitment, where language, for example, can inadvertently indicate a preference for a particular age group. De-bias training is the best way to eliminate the risk of age discrimination.

## Specific regulatory / legislative requirements

### **Legislation**

Age is a protected characteristic under the Equality Act 2010. Under section 5 of the Equality Act, age is defined by reference to an individual's age group.

Unlike other protected characteristics, a different approach is taken with age, because some practices and rules relating to age are seen as justifiable when applying the objective justification test.

Under the objective justification test the burden is on the employer to demonstrate that a particular practice/ provision is justified.

The question of whether a practice or provision is a proportionate means of achieving a legitimate aim is a two-stage process:

1. Is the aim of the provision, criterion or practice legal and non-discriminatory, and one that represents a real, objective consideration?
2. If the aim is legitimate, is the means of achieving it proportionate - i.e. necessary in all of the circumstances?

### **Regulation**

The BSB Handbook contains a core duty not to discriminate (CD8). Rule C12 in the BSB Handbook also states:

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

The Handbook prohibits all discrimination on all grounds so, although certain types of age discrimination against under-18s in service delivery are not currently unlawful, generally age discrimination in service delivery is prohibited by the Handbook.

### **Existing frameworks, materials and resources for the Bar**

The **BSB** has published supporting information to the BSB Handbook Equality Rules, [which can be found here](#).

This includes practical examples of how instances of discrimination can arise in practice; for example in Section 9 concerning harassment:

A BSB authorised body employs a former clerk, who retired at the age of 65, to carry out various administrative tasks. When he comes into the office, the other employees 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 says nothing. The employee’s behaviour is likely to be unlawful and the BSB authorised body, as the employer, is likely to be vicariously liable.

### **Other commendable practice beyond the Bar**

The **Centre for Ageing Better** has [reported on promoting age-friendly workplaces, including a summary at section 5.3 on promising approaches](#). Some of the key themes centre around:

- Eliminating bias at the application stage
- Appropriate training
- Diversity champions
- Advertising should be aimed at the widest possible audience to encourage all age groups to apply, avoiding language that might imply preference for certain age groups e.g. “recent graduate”

**ACAS** has prepared a [worksheet which identifies key considerations for employers](#) to reduce the chances of age discrimination happening.

**Age UK** offers [resources for individuals in relation to age discrimination](#).

## **Overview of themes / best practice**

The following are the themes and best practice for organisations (both sets of chambers and employers of barristers) to consider in relation to age:

- Exclusion of older age groups - particularly those nearing retirement - might give rise to discrimination, and also potentially misses a pool of talent.
- Age-related criteria should not be used in recruitment adverts.
- Age should not be used as an indicator to make judgements about a person's abilities or fitness. Where judgement is required, occupational health assessments might be appropriate.
- Inclusion policies are not compulsory, but they assist in addressing workplace culture.
- Employees of all ages should be eligible for training and development programmes.
- Flexible working should also be seen as a retention tool and assist in individuals returning to work.
- Where redundancies occur, organisations should avoid "last in first out" policy as it may be indirectly age discriminatory.

# Bullying and harassment

## Overview

In October 2020, YouGov published a qualitative study on *Bullying, Discrimination and Harassment at the Bar*<sup>5</sup> following research carried out on behalf of the Bar Standards Board. The researchers concluded that “*workplace bullying, discrimination and harassment still exists at the Bar in 2020*”. This is in spite of the prohibition of harassment in the Equality Act 2010, the introduction of BSB’s equality rules in 2012 and years of work in this area by the Bar Council under the fundamental principle that “*There is no place for bullying and harassment at the Bar*”.<sup>6</sup>

Even more worryingly, the YouGov study concluded that bullying, discrimination and harassment at the Bar “*is perceived to be tolerated to a certain extent due to the adversarial, male dominated culture and competitive nature of the Bar.*”

It is the responsibility of every barrister and chambers or organisation to take steps to eliminate bullying and harassment, and end the culture of tolerance which has enabled abusive behaviours to survive for so long despite legislative and regulatory prohibition. The BSB and the Bar Council have produced a series of guidance documents and model policies to support individual chambers in the formation and adoption of a bullying and harassment policy which meets bare-minimum legislative and regulatory requirements. There are also resources available to assist in the creation of more ambitious policies aimed at cultural change and promoting dignity at work. A chambers’ anti-harassment policy should:

1. Define negative behaviours and conduct.
2. Create a mechanism for complaints to be reported, investigated and, where necessary, referred to the BSB.
3. Identify sanctions for findings of misconduct.
4. Consider the potential to create a practice and culture of ‘Dignity at Work’.

## Legislative Requirements

The Equality Act 2010 prohibits harassment, which is defined as “unwanted conduct”:

1. Related to a person’s age; disability; gender reassignment; race; religion or belief; sex; or sexual orientation; and
2. With the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.<sup>7</sup>

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<sup>5</sup> [October-2020-BDH-at-the-Bar-full-report.pdf \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/wp-content/uploads/2020/10/October-2020-BDH-at-the-Bar-full-report.pdf)

<sup>6</sup> [Bullying and harassment \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/what-we-do/anti-bullying-and-harassment/)

<sup>7</sup> s.26

Whether conduct can be said to have the 'effect' outlined above depends on consideration of the affected person's perception of the conduct, the circumstances of the case and whether it is reasonable for the conduct to have had that effect.

The Equality Act also prohibits victimisation of a person (i.e. subjecting a person to a detriment) because they make (or support) an allegation or claim relating to harassment.<sup>8</sup>

The Equality Act contains specific prohibitions against a barrister or a barristers' clerk:

1. Harassing a pupil barrister, tenant or applicant for pupillage or tenancy<sup>9</sup>
2. Victimising a person:<sup>10</sup>
  - a. In the arrangements made for deciding to whom a pupillage or tenancy is offered;
  - b. As to the terms on which an offer of pupillage or tenancy is made;
  - c. By not offering a person a pupillage or tenancy.
3. Victimising a pupil barrister or tenant:<sup>11</sup>
  - a. As to the terms of the pupillage or tenancy;
  - b. In the way that the pupil or tenant is afforded access (or by not affording access) to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  - c. By terminating a pupillage or subjecting a tenant to pressure to leave chambers;
  - d. By subjecting the pupil or tenant to any other detriment.

Further, a criminal offence may be committed if a person pursues a course of conduct which they know/ought to know or a reasonable person would think amounts to harassment of another.<sup>12</sup> The sending of grossly offensive or threatening letters, emails and other electronic communications may also constitute commission of a criminal offence.<sup>13</sup>

## **Regulatory Requirements**

### **BSB Core Duties**

The BSB's Core Duties include requirements that all barristers must act with honesty and integrity<sup>14</sup> and must not act in a way which is likely to diminish public trust and confidence in the profession.<sup>15</sup> Unlawful victimisation or harassment is likely to be treated as a breach of these Core Duties.<sup>16</sup>

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<sup>8</sup> s.27

<sup>9</sup> s.47(3)

<sup>10</sup> s.47(4)

<sup>11</sup> s.47(5)

<sup>12</sup> Protection from Harassment Act 1997, s.1

<sup>13</sup> Malicious Communications Act 1988, s.1

<sup>14</sup> [The BSB Handbook - Version 4.6 \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk) Core Duty 3

<sup>15</sup> Core Duty 5

<sup>16</sup> gC25

## **BSB Code of Conduct Rules**

The BSB Code of Conduct specifically prohibits victimisation and harassment of any 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, or pregnancy and maternity.<sup>17</sup>

Further, barristers with reasonable grounds to believe that there has been “serious misconduct” by another barrister are obliged to make a report to the BSB.<sup>18</sup> Serious misconduct specifically includes harassment.<sup>19</sup>

All barristers’ chambers (and BSB entities) are required to have a written anti-harassment policy and procedure for dealing with complaints of harassment.<sup>20</sup>

## **Existing frameworks, materials and resources for the Bar**

### **BSB guidance**

The BSB Equality Rules Handbook<sup>21</sup> describes harassment as a “*particularly difficult issue*” because:

1. Conduct intended as a ‘joke’ may be perceived as harassment by those it is directed at or witnessed by.
2. Those experiencing harassment may be afraid to complain.

To address this, the BSB recommends:

1. Active promotion of chambers’ anti-harassment policy by people in senior positions;
2. Training for those in senior or supervisory roles on how to keep the work environment free of harassment and how to deal with it should it occur;
3. Provision of informal means of resolving complaints of harassment in the first instance;
4. Designation of an adviser to assist persons subjected to harassment.
5. Establishment of independent, objective, sensitive and fair procedure for the internal investigation of complaints; and
6. A principle of treating violations of the anti-harassment policy as a disciplinary offence.

The BSB also provides a short (10-point) model policy which is easily adoptable by any chambers or BSB entity in need of complying with the obligation to have a written harassment policy.

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<sup>17</sup> rC12

<sup>18</sup> rC66-68

<sup>19</sup> gC96

<sup>20</sup> rC110

<sup>21</sup> [BSB-Equality-Rules-Handbook.pdf \(barcouncil.ethics.co.uk\)](https://www.barcouncil.ethics.co.uk/BSB-Equality-Rules-Handbook.pdf)

There is separate guidance on reporting serious misconduct to the BSB<sup>22</sup> which sets out that:

1. Barristers who have been subjected to harassment and victimisation themselves will not face enforcement action for failing to report it to the BSB.
2. Pupil barristers and barristers of fewer years' standing call who may worry that by reporting harassment to the BSB, they will subsequently be treated less favourably, are encouraged to first to discuss concerns with colleagues, pupillage supervisors, heads of chambers or heads of legal practice.
3. If a barrister is in doubt as to whether or not particular behaviour amounts to serious misconduct, they should consider discussing it with the Bar Council's Ethical Enquiries Helpline.

It is important to recognise that statutory and regulatory protections against harassment apply only to conduct related to certain protected characteristics. The list of protected characteristics in the BSB Code of Conduct is longer than that in the Equality Act, but there will be situations where 'bullying' conduct arises from circumstances other than by reference to a protected characteristic.

### **Bar Council guidance**

The Bar Council has published separate guides on:

1. [Discrimination, Harassment, Bullying and Inappropriate Behaviours: Information for Barristers](#)
2. [Bullying by judges](#)

Judicial bullying is recognised by the Bar Council as presenting additional challenges to barristers who may feel unable or reluctant to complain despite the potentially significant (personal and professional) consequences of bullying by a judge. The Bar Council's guide advises that judicial bullying should be addressed at the time it occurs, if possible - but if not, a note should be taken of what took place. Support should be sought from a trusted colleague or the Bar Council's E&D helpline; a formal complaint to the Judicial Conduct and Investigations Office should be considered; and, in the absence of a formal complaint, a report should be made (confidentially) to someone in a position of leadership at the Bar (a head of chambers or senior practitioner, a Circuit or Specialist Bar Association representative, or a representative of the Bar Council).

The Bar Council also has a comprehensive Equality and Diversity guide titled '[Tackling Sexual Harassment](#)' but which covers wider issues of harassment and bullying as well. Attached to that guide is an ambitious (14 page, 78 paragraph) model 'Dignity At Work Policy'. The Bar Council model policy is (by design) much more wide-ranging than the BSB model harassment policy. Whilst the BSB model policy is narrow in scope and focused on fulfilling the anti-harassment requirements of the Code of Conduct, the Bar Council model policy's

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<sup>22</sup> [Reporting-Serious-Misconduct-of-Others.pdf \(barstandardsboard.org.uk\)](#) Note, there is also a Guide to Reporting Serious Misconduct published by the Bar Council [Serious-Misconduct-1.pdf \(barcouncilethics.co.uk\)](#)



stated aim is to “*promote and provide a safe environment for everyone who is associated with Chambers...ensuring they can work without hindrance, achieve their potential, socialise with dignity and respect from others, and flourish professionally.*” As such, the Bar Council recognises that chambers may wish to “*pick and choose*” which elements of the model policy they wish to adopt.

### **Other resources**

The Bar Council hosts an online tool for barristers to confidentially and anonymously report inappropriate behaviours. The [‘Talk to Spot’ app](#) allows barristers to record and, if they wish, report incidents of bullying, harassment and discrimination.

The Bar Council also offers a training course for barristers, clerks and chambers’ staff on [‘Tackling Harassment, Bullying and Inappropriate Behaviours’](#). The course aims to give a practical insight into dealing with inappropriate behaviours, through a discussion of techniques designed to tackle harassment and to provide support to colleagues.

A detailed information pack on bullying and harassment is available on the [Wellbeing at the Bar website](#). The pack includes information and advice for barristers who have experienced bullying and harassment, as well as a list of contacts and organisations that can provide support.

The Inns of Court have produced a joint [Anti-Harassment Policy](#) which covers members of each Inn at all levels (including students) in connection with the activities of the Inn (though not limited to activities at the Inns’ premises). Each Inn has specially trained employees designated to deal with complaints and concerns (usually the Under Treasurer or Sub-Treasurer of the Inn) whose details are listed on their websites.<sup>23</sup> A report of inappropriate behaviour can be made confidentially in the first instance.<sup>24</sup>

[‘All Rise’](#) is an initiative aimed at tackling bullying, harassment and belittling behaviours at the Bar. Barristers can identify themselves as ‘active bystanders’ by wearing ‘All Rise’ pin badges at court, in chambers or at their place of work. Wearing the ‘All Rise’ pin is a symbol of commitment to zero tolerance of unacceptable behaviour at the Bar. Chambers, circuits and other Bar institutions can join as sponsors and partners of the initiative to demonstrate their organisation’s stand against bullying and harassment at the Bar.

The disproportionate bullying and harassment faced by Black, Asian and other ethnic minority barristers is considered in the Bar Council’s report [‘Race at the Bar: A snapshot report’ \(November 2021\)](#).

### Commendable practice beyond the Bar

The Law Society of Scotland has a [‘Guide to preventing bullying and harassment’](#) which includes two model (non-prescriptive) policies:

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<sup>23</sup> [Anti-Harassment | Inner Temple](#), [Harassment Policy | Middle Temple](#), [Support and Wellbeing at the Bar | ~ Gray's Inn \(graysinn.org.uk\)](#) and [Diversity & Inclusion - Lincoln's Inn \(lincolnsinn.org.uk\)](#)

<sup>24</sup> The Inner Temple website offers an electronic reporting form: [Report an Incidence of Harassment | Inner Temple](#)

1. A bullying and harassment policy focusing on defining negative behaviours (which is narrow in scope, as is the BSB model policy)
2. A 'Dignity at Work Policy' that aims to identify positive behaviours and the benefits they can bring to organisations and individuals (in a similar vein to the Bar Council model policy).

ACAS has ['A guide for managers and employers'](#) on 'Bullying and harassment at work' which contains a useful definition of bullying as 'offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.'

#### Themes/Best Practice

1. Define negative behaviours and conduct
  - a. Harassment is defined in the Equality Act and BSB Code of Conduct by reference to certain protected characteristics.
  - b. Bullying (which need not be linked to a protected characteristic) has a wider definition, as considered by ACAS.
  - c. Include negative conduct which arises from an allegation or complaint being made (victimisation).
  - d. Give examples of negative conducts to assist readers in understanding the implications of what may be considered 'joking' behaviour.
2. Create a mechanism for:
  - a. Reporting negative behaviours within chambers (informally and formally)
  - b. Managing and investigating of formal complaints of negative behaviour
  - c. Disciplinary sanctions for established breaches of chambers policy on negative behaviours.
  - d. Individual members and chambers' management to report serious misconduct to the BSB
3. The opportunity exists for chambers to go further than focussing on negative behaviours by establishing a policy which aims to develop a practice and culture of 'Dignity at Work'.

# Caring responsibilities, parental leave and retention of women

## Overview

Women have been historically underserved by the Bar as a career option. In 2016, only 13% of QCs were women. In 2019 that had risen to 16.2%: there is clearly a long way to go. More frighteningly, only 32% of the Bar post-15 years Call are women: retention continues to be a massive problem, with the exodus of highly qualified women from the profession showing little sign of slowing down. It is simply not acceptable for a profession to remain so solidly male at the more senior level in the 2020s.

The retention of women remains a significant problem because, in turn, the pool of candidates for appointment to QC and the Bench dwindles. If the Bar's institutions are concerned that the Bar should be more reflective of the population that we serve, retaining women at or approaching childbearing age or those with caring responsibilities should be the absolute priority.

Below are some of the existing schemes in place to assist chambers with retaining women, but we strongly urge influential senior men (including those at QC level or at the Bench) to make the case for revolutionising the approach to those with caring responsibilities, so that more women feel secure and can flourish in their chosen profession.

The themes and best practice that emerge in relation to caring responsibilities and retention of women are broadly to:

- Clear and well-communicated maternity and parental/caring leave policies to include:
  - Consideration of financial well-being
  - Financial support available to those who require it
  - Clear monitoring of work that is covered by others when a barrister is away on leave
  - Clear direction that those who return after caring leave will take back those cases that were covered in their absence
- Adherence to those policies for all who require them
- Clarify and communicate the content of those policies so that barristers know that they are able to take such leave
- Scrutinise all operational processes and policies
- Engage in data monitoring to inform policy update and implementation

- Support inclusive retention and career progression of barristers and staff, whether by internal or external mentoring schemes

The detailed actions recommended for each aspect are set below under 'Themes / best practice', after an outline of the sources from which they have been drawn. See also section 6 on Flexible working, part-time working and career breaks, and Race and Religion

## **Specific regulatory / legislative requirements**

The BSB has published [supporting information for the BSB Handbook Equality Rules](#) which outlines the legal and regulatory obligations of chambers and BSB entities.

### **Legislation**

The Equality Act 2010 prohibits discrimination on the grounds of specified protected characteristics. Under section 4 the protected characteristics include sex, pregnancy and maternity (including breastfeeding).

The main types of conduct prohibited under Chapter 2 are **direct discrimination** (including combined discrimination on the basis of two protected characteristics), **indirect discrimination, harassment** and **victimisation**.

The legislation includes specific provisions covering barristers and clerks. Under section 47 there are various provisions in relation to:

- the arrangements made for deciding to whom to offer pupillage or tenancy
- the terms on which pupillage or tenancy are offered
- the terms on which someone is a pupil or tenant
- the way in which a pupil or tenant is afforded access to opportunities to opportunities for training or gaining experience or for receiving any other benefit, facility or service
- termination of pupillage or tenancy
- treatment of pupils or tenants
- the instruction of barristers.

The legislation permits **positive action** to be taken in specified circumstances. Under section 158 where a person reasonably believes that persons with a shared protected characteristic suffer a disadvantage, have particular needs or are disproportionately under-represented, they may take any step to encourage or enable that group to overcome or minimise the disadvantage.

## Regulation

The BSB Handbook includes a **core duty not to discriminate** at CD8. This is supplemented by rC12, which (in parallel with the Equality Act 2010) specifies grounds including sex, marital or civil partnership status, pregnancy and maternity:

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

BSB Handbook rC110.3 requires chambers or BSB entities to undertake **equality monitoring** and associated **remedial action**, including specifically in relation to sex and maternity:

### **Parental leave**

- .k chambers has a parental leave policy which must cover as a minimum:*
- .i the right of a member of chambers to take parental leave;*
- .ii the right of a member of chambers to return to chambers after a specified period, or number of separate periods, of parental leave, provided the total leave taken does not exceed a specified maximum duration (which must be at least one year);*
- .iii a provision that enables parental leave to be taken flexibly and allows the member of chambers to maintain their practice while on parental leave, including the ability to carry out fee earning work while on parental leave without giving up other parental leave rights;*
- .iv the extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave;*
- .v the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave;*
- .vi where any element of rent is paid on a flat rate basis, the chambers' policy must as a minimum provide that chambers will offer members taking a period of parental leave a minimum of 6 months free of chambers' rent;*
- .vii the procedure for dealing with grievances under the policy;*
- .viii chambers' commitment to regularly review the effectiveness of the policy;*

### **Flexible working**

- .l chambers or BSB entity has a flexible working policy which covers the right of a member of chambers, manager or employee (as the case may be) to take a career break, to work part-time, to work flexible hours, or to work from home, so as to enable them to manage their family responsibilities or disability without giving up work*

### **rC112**

For the purposes Rule rC110 above “allocation of unassigned work” includes, but is not limited to work allocated to:

- .1 pupils;
- .2 barristers of fewer than four years’ standing; and
- .3 barristers returning from parental leave

The Guidance to the BSB Handbook is instructive:

#### **gC148**

- a) Rule rC110.3.k applies to all members of chambers, irrespective of whether their partner or spouse takes parental leave.
- b) A flexible policy might include for example: keeping in touch (KIT) days; returns to practice in between periods of parental leave; or allowing a carer to practise part time.
- c) Any periods of leave/return should be arranged between chambers and members taking parental leave in a way that is mutually convenient.

#### **gC149**

Rule rC110.3.k.vi sets out the minimum requirements which must be included in a parental leave policy if any element of rent is paid on a flat rate. If rent is paid on any other basis, then the policy should be drafted so as not to put any self-employed barrister in a worse position than they would have been in if any element of the rent were paid on a flat rate.

## **Existing frameworks, materials and resources for the Bar**

The Bar Council has published:

- A [parental leave guide and policy template](#)
- A [mentoring scheme](#)
- The [Women in Law Pledge](#)
- The [‘Race at the Bar: A Snapshot report’](#), which contains a detailed chapter on retention generally, and considers the intersection between sex and race

The Bar Standards Board has published:

- [Guidance on CPD requirements](#)
- [Women at the Bar report \(2016\)](#)

The Western Circuit’s [“Back to the Bar” report](#):

[Professor Jo Delahunty QC in Counsel Magazine, September 2020](#) (this article contains links to many excellent resources):

The [Association of Women Barristers](#)

## **Other commendable practice beyond the Bar**

An [American perspective](#)

A [solicitor-based perspective](#)

The law firm Farore Law has made flexible working the norm for its own lawyers and support staff, stating that it has “great potential to improve accessibility and retention across the profession which prior to the [Covid 19] pandemic has been disappointingly low”. Their 2019 report into the slow progression of women in professions is [available here](#) (or [as a PDF](#)).

HMCTS has made a [policy](#) commitment to providing support for new mothers who are breastfeeding or want to express in public areas in courts and tribunals buildings, and to provide access to private spaces for breastfeeding mothers as an alternative.

In business:

<https://hbr.org/2017/05/how-we-closed-the-gap-between-mens-and-womens-retention-rates>

<https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>

[https://www.everywoman.com/sites/default/files/Retaining\\_and\\_Advancing\\_Women\\_in\\_Business\\_2016\\_everywoman\\_0.pdf](https://www.everywoman.com/sites/default/files/Retaining_and_Advancing_Women_in_Business_2016_everywoman_0.pdf)

## **Themes / best practice**

### **Clarify and communicate policies and objectives**

- Set clear expectations that your organisation values women and those with caring responsibilities and wishes to retain those individuals as members of chambers/within the workplace.
- Encourage everyone to develop the knowledge and confidence to talk about and combat sex/maternity discrimination.

- Build support by creating networks, safe spaces and times for staff and barristers to talk, share experiences and learn from each other.
- Consider sharing examples of how your organisation has dealt with maternity/caring leave to demonstrate commitment and inspire confidence.

### **Commit to sustained action through visible leadership**

- Ensure clear leadership from the top (Head of Chambers, Senior Clerk, CEO and management committees) and understanding that supporting equality and women at the Bar is the responsibility of all leaders and managers.
- Create a long-term action plan and consider appointing a dedicated individual or committee to drive progress and hold leaders to account - for example existing Equality and Diversity Officers (EDOs).
- Encourage all individuals to promote inclusion and make clear that an individual does not have to be someone who has taken leave or returned to work after leave in order to act as a champion or take a stand.

### **Scrutinise all operational processes and policies**

- Conduct an audit not just with a view to compliance, but with the aim of actively valuing and encouraging respectful and positive attitudes to those with parental or other caring responsibilities.
- Embed consideration of equalities into all your major decision-making processes (for example, ensure one person on each decision-making committee has an equality remit)
- Reward individuals for promoting equality, and consider setting related staff performance objectives (for example in marketing opportunities, supporting applications for Silk etc.)
- Ensure that barristers and staff understand how to make complaints about discriminatory and inappropriate behaviours, and that your processes are robust.

### **Engage in data monitoring to inform remedial action**

- Collect and audit data on a regular basis, regarding your organisation's:
  - workforce profile
  - recruitment and retention of barristers and staff
  - fee income and allocation of work
  - marketing opportunities
  - membership of key decision-making committees
- Use the data to investigate and actively address anomalies:
  - consider setting targets for representation to work towards
  - use (and normalise the use of) positive action where supported and sophisticated enough to differentiate between and address the experiences of different groups
- Consider publishing your figures and action plan to demonstrate commitment.



### **Ensure an inclusive approach to outreach and recruitment of barristers and staff**

- Critically appraise the breadth and accessibility of your channels for recruiting talent
- Consider targeted advertising and outreach work (for example open days, mini-pupillages and mentoring programmes)
- Make your application processes as transparent and accessible as possible, for example:
  - consider using the Pupillage Gateway
  - clarify what any job entails (so that applicants have the opportunity to fully consider whether there is any chance it may conflict with their religion or beliefs)
  - inform applicants of your selection criteria
  - Inform candidates who is on your pupillage interviewing panel

### **Support inclusive retention and career progression of barristers and staff**

- Champion talent by offering barristers and staff mentoring or sponsoring, and consider the use of reverse - or mutual - mentoring.
- Encourage all members and staff to participate in marketing, training, development, secondment and promotion opportunities.
- Adapt methods of delivering such opportunities if current arrangements (for example, time of day; use of language or physical contact; dietary requirements and/or service of alcohol) may have the effect of disadvantaging individuals because of their background.

### **UK-based legal networks open to the Bar**

[Association of Asian Women Lawyers](#)

[Black Women in Law](#)

[Temple Women's Forum](#)

[The Association of Women Barristers](#)

[The First 100 Years](#)

# Disability, neurodiversity and reasonable adjustments

## Overview

'Disability' is a protected characteristic under the Equality Act 2010. It is important to acknowledge that not all disabilities are visible. Steps must be taken to ensure that an individual's disability does not prevent them from participating in the workplace, whether that is as a lay client, a member of staff, a pupil or a tenant in chambers.

Neurodiversity is included here separately, as not all neurodivergent individuals will consider themselves to have a disability. However, under the Equality Act 2010, neurodivergent individuals are likely to meet the definition of a disability.

Greater awareness of disability in the workplace will have a positive impact for all and will assist in changing the culture of the Bar as well as being more inclusive.

The themes and best practice that emerge in relation to disability and neurodiversity:

- Disabilities can often be hidden.
- Reasonable adjustments are a vital tool for establishing equitable participation for all.
- In a chambers setting, making reasonable adjustments is something which should be kept under review and not limited to the regular users of chambers, i.e. visitors attending chambers.
- Chambers management and EDOs should play a key role in ensuring that best practice is adopted.
- Chambers management/ EDOs should play a key role in ownership and promotion of key disability targets and inclusivity messages.

## Specific regulatory / legislative requirements

### Legislation

The **Equality Act 2010** makes it clear that disability includes not only a **physical** disability but also a **mental impairment**. It also covers disfigurement, progressive conditions and recurring impairments. There are specific rules in respect of conditions such as cancer, HIV and MS, which are considered impairments for the purposes of the Act (Sch.1 para 6).

**Section 6 of the Equality Act 2010** defines what amounts to a 'disability', where there are two key elements:

1. the individual has a physical or mental impairment; and
2. the impairment has substantial and long-term adverse effect on the individual's ability to carry out normal day-to-day activities.

**Long-term** means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life (Sch. 1 para 2(1)). **Substantial** means more than minor or trivial (s. 212(1)).

Where a person is taking measures to treat or correct an impairment (e.g. other than by using spectacles or contact lenses) and, but for those measures, the impairment would be likely to have a substantial adverse effect on the ability to carry out normal day to day activities, it is still to be treated as though it does have such an effect (Sch. 1 para 5). This means that impairments that might be considered to be 'hidden' or not readily apparent (e.g. mental illness or mental health conditions, diabetes and epilepsy) may count as disabilities where they fall under the definition of the Act.

Under section 15 of the Equality Act 2010, a person discriminates against a disabled person if they treat that person unfavourably because of something arising in consequence of that person's disability, and the treatment cannot be shown to be a **proportionate** means of meeting a **legitimate aim**, unless the employer does not know, and could not reasonably be expected to know, that the person has the disability (s.15(2)).

Being treated **unfavourably** means that the individual must have been put at a **disadvantage**. The unfavourable treatment must arise because of something as a consequence of the disability. This means that there must be a **connection** between the unfavourable treatment and the disability (s.15(1)(a)).

Unfavourable treatment will not amount to discrimination arising from disability if the employer can show that the treatment is a 'proportionate means of achieving a legitimate aim' (s.19(2) (d)).

Under the **objective justification test**, the burden is on the employer to demonstrate that a particular practice/ provision is justified. The question of whether a practice or provision is a proportionate means of achieving a legitimate aim is a two-stage process:

1. Is the aim of the provision, criterion or practice legal and non discriminatory, and one that represents a real, objective consideration?

2. If the aim is legitimate, is the means of achieving it proportionate -i.e. Necessary in all of the circumstances?

Section 20 of the **Equality Act 2010** contains the duty to make **reasonable adjustments**. The duty to make reasonable adjustments comprises three requirements:

1. Where a **practice, criteria or provision** (i.e. policy or procedure) puts an individual at a substantial disadvantage (comparable to an individual who is not disabled), to take reasonable steps to avoid the disadvantage occurring (s. 20(3));
2. Where a **physical feature** puts an individual at a substantial disadvantage (comparable to an individual who is not disabled), to take reasonable steps to avoid the disadvantage occurring (s.20 (4));
3. Where a disabled person would, but for the use of an **auxiliary aid**, be put to substantial disadvantage in relation to a particular matter (comparable to an individual who is not disabled), to take reasonable steps to provide the auxiliary aid (s.2(5)).

The Act states that where the provision, criterion or practice or the need for an auxiliary aid relates to the provision of information. The steps which it is reasonable for the employer to take include steps to ensure that the information is provided in an accessible format (e.g. use of audio tapes etc) (s.20(6)).

The Act says that avoiding a substantial disadvantage caused by a physical feature includes:

- removing the physical feature in question;
- altering it; or
- providing a reasonable means of avoiding it (s. 20(9)).

Under the Act, the following are to be treated as a physical feature:

- a feature arising from the design or construction of a building,
- a feature of an approach to, exit from or access to a building,
- a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
- any other physical element or quality (s.20(10)).

Under the Act, an auxiliary aid is something to provide support or assistance to a disabled individual (s.20 (11)). It also includes auxiliary services (e.g provision of a sign language interpreter).

An employer only has a duty to make a reasonable adjustment if they know or could reasonably be expected to know that a disabled person is, or may be, an applicant for work (Sch. 8 para 20(1)(a)).

For disabled workers already in employment, an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective assessment (Sch. 8 para 20(1)(b)).

It should be noted that under Schedule 8 of the Equality Act 2010, specific reference is made to “barrister” or “barrister’s clerk” as a potential employer, with an applicant for pupillage or tenancy being referred to as a potential applicant. In addition to this, s47(7) of the Equality Act states that a duty to make a reasonable adjustment applies to a barrister.

### **Regulation**

The BSB handbook contains a core duty not to discriminate (CD8). Rule C12 in the BSB handbook also states:

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

Rule C110(3)(m) requires that chambers must have a **reasonable adjustments policy** aimed at supporting disabled clients, its workforce and others including temporary visitors to chambers.

Examples of reasonable adjustments include the following:

- Making adjustments to premises (e.g. a wheelchair ramp);
- Providing a reader or interpreter
- Allowing someone to work from home
- Modifying procedures
- Modifying or acquiring equipment
- Providing supervision or other support
- Providing documents in larger fonts
- Arranging meetings, conferences, hearings and events in accessible venues
- Understanding and supporting pupils, barristers and staff with dyslexia

### **Existing frameworks, materials and resources for the Bar**

The **BSB** has published supporting information to the BSB Handbook Equality Rules, which [can be found here](#). This outlines the legal and regulatory obligations of chambers. Section 12 deals specifically with providing services for disabled people, and Section 13 includes a

model reasonable adjustments policy for chambers to adapt. The supporting information also includes some practical guidance and useful scenario-based examples to assist covering a range of issues.

As well as the model reasonable adjustments policy referred to above, the BSB has published a '[Reasonable Adjustment Policy](#)' document that is specific to the BSB and its employees - but it is a useful template that examines what such a policy might look like.

[Neurodiversity in Law](#) seeks to promote and support neurodiversity within the legal professions, and eliminate the stigma often associated with people who think differently.

## **Other commendable practice beyond the Bar**

The **SRA** has done work [setting out disability inclusive measures](#) that law firms can put in place for employees, clients and others they deal with in the course of their work.

The **Government** in conjunction with the Chartered Institute for Personnel and Development (CIPD) has produced a [practical guide for recruiting, managing and developing people with a disability or health condition](#). It aims to be a quick and easy reference tool for managers to use in their daily work, providing key information and advice on the employment of disabled people; and it also includes links throughout to further, more detailed information.

**Disability Rights UK** has produced a [guide for recruiting and supporting disabled people in the workplace](#). This includes a suggested six stage roadmap that is adapted from the McGregor-Smith Review report on Race in the Workplace.

**Remploy** has created a series of [disability awareness factsheets](#) which include useful background information about a range of conditions.

**Scope** has produced several useful resources, including:

- A guide that provides employers with [advice and guidance on how to collect and report on several disability measures in the workplace](#). The intended aim is to improve workplace culture in respect of disabilities by having an accurate picture. It is aimed at larger organisations where there are over 250 employees, but smaller organisations such as barristers' chambers may find it useful.
- A campaign called '[End the Awkward](#)' which is aimed at helping people feel more comfortable when talking about disability. This includes tips on preferred language.

The **Equality and Human Rights Commission** website offers a [multi-page guide to workplace reasonable adjustments](#). It 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.”* It also provides practical worked examples of the reasonable adjustments that might be made in various situations.

## **Themes/best practice**

Disabled people are under-represented in today’s workforce, with just half of disabled people in employment. However, there are more than one million disabled people who aren’t in work who would like to work. Not all disabilities are visible. Greater awareness about disabilities in the workplace will foster a more inclusive workplace and allow people with disabilities to reach their full potential.

The following are the themes and best practice for organisations (both chambers and employers of barristers) to consider in relation to disability and neurodiversity:

### **Collect disability data and monitor progress on targets**

- Commit to setting targets and gathering and publishing statistics on disabled employment rates. Communicate this commitment to everyone.
- Select an appropriate definition of disability for disability measures.
- Collect, monitor and publish employee statistics on disability towards targets.

### **Senior leaders in chambers - ownership and communication**

- Heads of chambers/senior leaders in chambers should play a key role in the ownership and promotion of key disability targets and inclusivity messages.
- Promote role models, mentoring schemes to raise awareness, share experiences and improve opportunities.
- Transparency. Communicate success and failure in annual reports.

## **Workplace actions**

Promote and facilitate employee disclosure on disability - normalise discussions about disability.

- Ensure that the role of the EDO is well known to all members of chambers.
- Run workplace campaigns to promote disability disclosure and disability inclusion.
- Set aspirational workplace targets against national, regional and sector benchmarks.
- Introduce mandatory role-specific training in disability equality practice.
- Encourage mentoring and sponsorship for disabled employees or members of chambers.
- Support an employee disability network.

## **Target recruitment**

- Individuals who take part in recruitment must attend training.
- Examine recruitment processes, including collecting and monitoring applicant disability statistics and challenge sources of selection bias at all stages.
- Draft inclusive flexible job specifications and recruitment tests.
- Promote diverse shortlists and diverse interview panels.
- Create work experience or mini pupillages opportunities for disabled people.
- Partner with disabled people-led organisations.
- Support Access to Work applications.

## **Manage retention through inclusive processes and practices**

- Seek to embed disability ambition into organisation-wide policy and practice.
- Monitor, review and publish recruitment, promotion and retention policies, practices, targets and outcomes.
- Develop open and flexible career pathways.
- Provide employee rights to one year employment retention following disability onset.
- Provide training and facilities for specialist union representatives.
- Support requests for reasonable adjustments.



# Fair allocation of work

## Overview

The themes and best practice that emerge in relation to the fair allocation of work are broadly to:

- Engage in data monitoring to inform remedial action.
- Embed fair allocation of work/opportunity into all aspects of chambers' running.

Further detail for each is set out below under the heading 'Themes/best practice', after an outline of the sources from which they have been drawn.

## Legislative requirements

There is no legislation covering this issue for self-employed barristers, save insofar as an issue could arise under discrimination law. S.47(6) of the Equality Act 2010 makes it unlawful for a person instructing a barrister to discriminate. This includes clients, clerks and solicitors. The provision is reflected in solicitors' regulatory rules.

For a straightforward explanation of how the discrimination provisions in the 2010 Act apply to barristers, see sections 1 and 2 of the BSB Handbook Equality Rules, linked to below. At the time of writing the Handbook's index confusingly contains the wrong title for section 1 - the section is actually titled 'Basic Principles'.

There is no legislation covering the core issues around work allocation of what happens to unallocated work coming into chambers, or how leaders/juniors are selected.

## Regulatory requirements

Under rule c110, all barristers must take reasonable steps to ensure that their chambers or BSB entity complies with certain requirements including (in relation to fair allocation of work) the following (most relevant parts underlined):

### ***c110:***

*You must take reasonable steps to ensure that in relation to your chambers or BSB entity:*

- .1 there is in force a written statement of policy on equality and diversity; and*
- .2 there is in force a written plan implementing that policy;*

.3 the following requirements are complied with:

...

**Equality monitoring**

.f subject to Rule rC110.3.h chambers or BSB entity regularly reviews:

.i the number and percentages of its workforce from different groups; and

.ii applications to become a member of its workforce; and

.iii in the case of chambers, the allocation of unassigned work,

.g the reviews referred to in Rule rC110.3.f above include:

.i collecting and analysing data broken down by race, disability and gender;

.ii investigating the reasons for any disparities in that data; and

.iii taking appropriate remedial action;

...

**Fair access to work**

.i if you are a self-employed barrister, the affairs of your chambers are conducted in a manner which is fair and equitable for all members of chambers, pupils and/or employees (as appropriate). This includes, but is not limited to, the fair distribution of work opportunities among pupils and members of chambers;

...

**rC111**

For the purposes of Rule rC110 above, the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

.1 the arrangements in place in your chambers or BSB entity for the management of chambers or the BSB entity; and

.2 any role which you play in those arrangements.

**rC112**

For the purposes Rule rC110 above “allocation of unassigned work” includes, but is not limited to work allocated to:

.1 pupils;

.2 barristers of fewer than four years’ standing; and

.3 barristers returning from parental leave;

The guidance is given in the Handbook at gC140-gC153. Of particular relevance to work allocation:

**gC145**

For the purpose of Rule rC110 “regular review”, means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that “regularly” should mean annually. In respect of managers of a BSB entity or tenants, it is likely to be considered

reasonable that “regularly” should mean every three years unless the numbers change to such a degree as to make more frequent monitoring appropriate.

**gC146**

For the purposes of Rule rC110, “remedial action” means any action aimed at removing or reducing the disadvantage experienced by particular relevant groups. Remedial action cannot, however, include positive discrimination in favour of members of relevant groups.

**gC147**

Rule rC110.3.f.iii places an obligation on practices to take reasonable steps to ensure the work opportunities are shared fairly among its workforce. In the case of chambers, this obligation includes work which has not been allocated by the solicitor to a named barrister. It includes fairness in presenting to solicitors names for consideration and fairness in opportunities to attract future named work (for example, fairness in arrangements for marketing). These obligations apply even if individual members of chambers incorporate their practices, or use a “ProcureCo” to obtain or distribute work, as long as their relationship between each other remains one of independent service providers competing for the same work while sharing clerking arrangements and costs.

**gC150**

For the purposes of Rule rC110 above investigation means, considering the reasons for disparities in data such as:

- .1 Under or overrepresentation of particular groups e.g. men, women, different ethnic groups or disabled people
- .2 Absence of particular groups e.g. men, women, different ethnic groups or disabled people
- .3 Success rates of particular groups
- .4 In the case of chambers, over or under allocation of unassigned work to particular groups

Note that gC145 appears to water down the potential impact of rules c110.3.f.iii and c.110.3.g through its suggestion that a review of unallocated work that takes place just once every three years could satisfy, in relation to tenants, the requirement to conduct such a review “regularly”. [The BSB Supporting Information Handbook Equality Rules](#) (linked to below) contain a conflicting suggestion that in fact such reviews should be quarterly: at section 6, paragraph 17 therein, in contrast to their repetition of the ‘three year’ idea at section 6, paragraph 7). Quarterly is a more realistic frequency to achieve the stated target of gC145, which is to conduct the reviews: “as often as is necessary in order to ensure effective monitoring and review takes place”.

## Existing Frameworks, Materials and Resources for the Bar

The BSB's **Supporting Information BSB Handbook Equality Rules** contains information relevant to this issue and is important reading, in particular at sections 6 and 8:

- Section 3, 'Equality Policy & Action Plan' encourages chambers to ensure that equality policies cover fair access to work and allocation of work
- Section 4, 'Equality & Diversity Officer' states that chambers' equality officer should be responsible for ensuring that the allocation of unassigned work is analysed 'regularly' and that 'any actions necessary to remedy or investigate fair outcomes are developed and added to chambers' equality action plan'
- Section 6 specifically concerns 'Recruitment and work allocation equality monitoring'
- Section 8 is specifically about 'Fair access to work.'

This is a **very useful summary** in [Counsel Magazine](#) of a **2017 Bar Council seminar**, which heard from a panel of clerks, practice managers and diversity experts, on the fair allocation of work.

Bar Council's '[Monitoring of Work Distribution Toolkit](#)' (December 2020) - part one of an intended series of guides - contains five suggested models for monitoring the allocation of work. The toolkit is focused on sex but the advice has wider applicability. It states: "Central to any intervention aimed at increasing diversity at the Bar has to be a focus on how work is distributed since which barristers receive work and receive the best paid work has a significant impact on who can develop and sustain a thriving practice, especially in light of childcare costs which can be significant."

This [BSB report 'Women at the Bar: research exploring solutions to promote gender equality' \(2018\)](#) in section 3, 3.1-3.17 'Findings - unfair treatment: work allocation, flexible working and parental leave' contains instructive examples into good practice around fair allocation of work and three specific proposed solutions to improve fairness: improving transparency, expanding monitoring and improving communication between clerks and barristers.

The [BSB's July 2016 report 'Women at the Bar'](#) looked at work allocation monitoring at paragraphs 24-33 and describes some experiences both positive and negative of research participants.

This [article in The Barrister](#) (undated but referring to the current BSB rules) discusses the experience of women at the Bar in relation to work allocation, referencing a July 2016 BSB report into the same which evidenced failures by chambers to introduce adequate equality & diversity practices, highlighting a 50-50 split between positive and negative experiences reported by those women surveyed. It describes the comments of women surveyed as a "damning indictment" on how the BSB's work allocation rules are being implemented. It is

instructive reading which illustrates how “bare minimum” compliance with BSB rules is insufficient to ensure success, and that what is really needed is deep engagement and commitment to drawing up a system in chambers that ensures fairness for all.

<https://www.barristermagazine.com/fair-allocation-of-work-a-bar-without-barriers/>

This [New Law Journal article \(2020\)](#) references the “shocking discrepancies in pay between male and female barristers” (Amanda Pinto QC, Chair of the Bar Council 2020) revealed by [Bar Council analysis of Bar Mutual Indemnity Fund data](#). A link to the Bar Council’s analysis of that data is provided in the second of the links below

A **series of articles in Counsel magazine (2018)** by HHJ Nott looks in detail at gender at the Bar and fair access to work, conducting some detailed number crunching. It concludes that the Bar has a long way to go to meet its obligations in relation to gender equality, that it is unsurprising the Bar has a retention problem and that there is inevitably therefore an ever shrinking pool from which to choose the best candidates for silk or judicial appointment. It also references a quote from Lord Sumption from 2012 that women choose to leave the Bar as a ‘perfectly legitimate lifestyle choice’, making the point that given the data available, the exodus looks less like a lifestyle choice and more a decision borne of an intolerance for iniquity.

<https://www.counselmagazine.co.uk/articles/gender-the-bar-and-fair-access-work-1>

<https://www.counselmagazine.co.uk/articles/gender-the-bar-and-fair-access-work-2>

[https://www.counselmagazine.co.uk/articles/gender-at-the-bar-and-fair-access-to-work-\(3\)](https://www.counselmagazine.co.uk/articles/gender-at-the-bar-and-fair-access-to-work-(3))

[https://www.counselmagazine.co.uk/articles/gender-at-the-bar-fair-access-to-work-\(4\)](https://www.counselmagazine.co.uk/articles/gender-at-the-bar-fair-access-to-work-(4))

This [article in Legal Futures \(2018\)](#) records an example of the kind of shocking discrimination in work allocation (client-led, in this case) that still occurs.

The [Institute of Barristers’ Clerks Code of Conduct](#) does not contain any requirements directly addressing the allocation of work but does require that a clerk uses their best endeavours at all times to promote the professional welfare of each member of chambers (1.2), and that a clerk shall be fully aware of the Bar’s Code of Conduct (3.2). The only provision in relation to the allocation of work to members of Chambers specifically is at 3.9, and is that it “shall be carried out on the basis that they are of sufficient ability and experience to deal with the matter competently and, in all instances, in consultation with and with the agreement of, those instructing”.

### **Commendable practice beyond the Bar**

Law firms: this [Practical Law article by Russ Martin of Ashurst](#) describes different methods of work allocation tried in law firms including ‘busy lists’, and explains an approach which Ashurst tried, after a pilot in 2015, which they have found to be a more efficient, transparent and fairer route to fair allocation: ‘work allocation managers’. Refers to

different kinds of bias that are avoided, including 'benevolent bias' (not offering an opportunity due to an assumption it will not be wanted, because e.g. the person is about to start parental leave, or because they have caring responsibilities). Much of it has equal relevance to chambers both in relation to unallocated work coming into chambers, and silk/junior opportunities.

## **Themes/best practice**

### **Engage in data monitoring to inform remedial action.**

- Without effective data monitoring, it is impossible to establish the nature or extent of any inequalities, identify required actions or to assess whether remedial actions are succeeding. 'You can't manage what you don't measure'. However, the absolute standard for minimum compliance with the BSB Handbook Rules on work allocation monitoring is low. It is far lower than the standard required by best practice both within and outside of the Bar. Achieving best practice is likely to involve frequent review at least quarterly. The examples of best practice in the 'Fair Share' article linked above include a "*system of quarterly meetings, a weekly review of the opportunities, and an annual review of private hourly rates.*" The flowchart at Annex A of the Bar Council's monitoring toolkit (linked to above) sets out a useful process that could be adopted and adapted.
- The BSB's Supporting Information (section 6, paragraph 12) already suggests that chambers consider keeping a database of work allocated to pupils, junior tenants and those returning of parental leave analysed by earnings, quantity of work and sources of work. Those are the three categories specified in rC112. However, as the rule expressly states, it is not intended to be *limited* to those categories. Accordingly, to achieve best practice chambers should be going further than the BSB's suggestions and considering all diversity categories including at least gender, ethnicity, disability and those returning from career breaks (including parental leave, sabbatical or secondment).
- Software can assist in achieving effective monitoring. Recording relevant data should be easy and efficient, as should the tools for reporting and analysis. Bar software providers have already engaged in improving tools for chambers to monitor work allocation and the issue is one the Legal Practice Managers Association have considered, so knowledge and experience already exists (beyond the materials linked to in this document) to be drawn on.

### **Embed fair allocation of work/opportunity into all aspects of chambers' operations**

- The fair allocation of work needs to become a normal everyday part of the functioning of the clerks' room both in terms of process but also culture.
- A policy alone will not bring about change. The reasons behind the policy need to be understood. Those responsible for implementing it need to be committed to it. Its

effectiveness needs regular review. Clerks and any others involved in implementing the policy need training to promote the understanding of why it is important to barristers and chambers as a whole. Commitment from leaders at all levels is needed to protect the data gathering process from becoming a 'tick box' exercise, used to demonstrate compliance but not actually effective in bringing about change.

- People who may be asked by clients for their views on who would be suitable for a piece of work (this includes, but plainly should not be limited to, senior members of chambers and clerks) should receive formal diversity training including on bias.
- If work allocation is being effectively monitored then it should be possible (and routine) to provide tenants with data at practice reviews/chambers meetings, demonstrating the results of such monitoring in order to give complete transparency and build trust/confidence. Discussion of work allocation is a stated purpose of practice review meetings, in the BSB's Supporting Information Handbook Equality Rules, chapter 8, paragraph 14.
- Fair allocation of work also includes fair allocation of opportunities. Matters such as practice teams' marketing opportunities (events, talks, article/blog writing, client networking opportunities) need to be considered to ensure that opportunities are being fairly offered and publicised to all who may wish to take them up.

# Flexible working, part-time working and career breaks

## Definitions

“Flexible working” is used in this document, and in many of the resources it references, as a convenient shorthand for a lot of different working needs including:

- Flexibility over the days/hours worked (contrasted with so-called ‘normal’ working hours of full-time, five days a week).
- Part-time or reduced hours working (contrasted with so-called ‘normal’ full time hours).
- Flexibility of location.

What these working needs have in common is that they all diverge from the traditional idea of a barrister being available for work in chambers full-time. It has always been assumed everyone at the Bar will work full-time. This assumption is no longer justified.

“Career break” is used to refer to a period of time away from practice. This could be for family, personal or professional development reasons, including sabbaticals. Time away from practice for parental leave is dealt with specifically in the ‘Caring responsibilities and retention’ section.

## Overview

The themes and best practice that emerge in relation to flexible working and career breaks are broadly to:

- Understand the link between flexible working or career breaks, and diversity and retention.
- Understand that not all barristers can work ‘normal’, full-time working hours, and make provision for this.
- Understand that some barristers may need to work flexibly or to have a short or long-term break from practice in order to ultimately remain at the Bar and make provision for this.
- Ensure that chambers/employers of barristers have clear policies which set out in clear terms the circumstances under which a barrister may work flexibly or take a career break, entitlement to rent/expenses relief if applicable, and the responsibilities of the barrister and their chambers/employer.



- Ensure that chambers rent/contribution structure is not overly burdensome for those who need to work flexibly or take a career break, particularly for those who need to work fewer hours/part-time (for example, requiring payments of a fixed amount regardless of income level) and for those who will not have a source of income during a career break.
- Ensure that assistance is provided to barristers in planning career breaks.
- Provide support to those barristers returning to practice after a career break and seeking to (re)build a practice.
- Lead from the top, ensure visibility, and embed flexible working practices throughout chambers (aka commit to sustained action through visible leadership).

The detailed actions recommended for each aspect are set out below under the heading 'Themes / best practice', after an outline of the sources from which they have been drawn.

### **Legislative requirements**

There is no legislation covering flexible working or career breaks for self-employed barristers.

Employed barristers, as with all employees, have since 2014 had a statutory right to request flexible working after six months' employment, which can only be refused where certain conditions are met.

### **Regulatory requirements**

The bare minimum that must be achieved is the regulatory requirement below.

Handbook rC.110.3(l) requires that:

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

## **Existing frameworks, materials and resources for the Bar**

### **For flexible working:**

The Bar Council published a '[Flexible working guide](#)' (2016) from their 'Ethics & practice' service. It is primarily a guide on *how to develop* a flexible working policy and contains a model policy.

The BSB's '[Supporting Information BSB Handbook Equality Rules](#)' at section 11 concerns Flexible Working and emphasises that in addition to having a policy, chambers need to consider the impact of the structure of their financial contributions upon those who work flexibly.

The BSB's July 2016 report '[Women at the Bar](#)' looks at flexible working issues faced by women at paragraphs 34-50 and records evidence that the vast majority of flexible working requests are due to child-caring commitments or other caring responsibilities.

### **For career breaks:**

The Bar Council has a [Career Break Advice Pack](#) which includes practical advice for closing down and opening up a practice before or after a career break (2016).

[Middle Temple's Talent Retention Scheme](#) is designed to provide support to the Inn's barristers returning from time out of practice.

The [Bar Council's Parental Support Hub](#) has published a guide on family career breaks (2019).

The BSB's '[Supporting Information BSB Handbook Equality Rules](#)' at section 11 makes brief mention at paragraphs 11-13 of provision in relation to career breaks.

## **Relevant articles:**

### **For flexible working:**

A [2015 Law Gazette article](#) reflecting on how attitudes to part-time working at the Bar lag far behind other professions, and a first-person account of how it can work, including examples of how different judges/tribunals have behaved to help or hinder the lives of working parents:

A [2020 Law Gazette article](#) commenting on the trend (emerging during the 2020/2021 Covid-19 pandemic) for chambers to reduce office space and embrace 'work-smart' policies offering more opportunity for flexible working:

### **For career breaks:**

A [2017 Counsel magazine article](#) on career breaks highlighting the importance of planning ahead and the support needed from chambers. Several practitioners share their career break experiences and reflect on the challenges they faced.

## **Other commendable practice beyond the Bar**

### **For flexible working:**

The law firm **Farore Law** has made flexible working the norm for its own lawyers and support staff, stating that it has “great potential to improve accessibility and retention across the profession which prior to the [Covid 19] pandemic has been disappointingly low”. Their 2019 report into the slow progression of women in professions is available [here](#) or as a pdf download [here](#):

The **CIPD (Chartered Institute for Personnel and Development)** published a guide for HR professionals, [‘Flexible Working: Lessons from the Pandemic’](#). Some of the guidance is of definite relevance to chambers, e.g. guidance around creating a culture in which matters of wellbeing can be raised and discussed without discomfort or embarrassment, or the need to consider internal factors that may prevent a barrister from using flexible working opportunities effectively, such as workload issues, an ‘always on’ culture, an over-developed sense of responsibility or difficulties around blurred work/life boundaries.

**CIPD** also has a [short guide to making online \(or hybrid\) meetings effective](#). This may be of interest to chambers considering how best to involve members who may not be physically present when chambers meetings/other meetings are needed.

[MotherPukka’s ‘Flex Appeal’ report](#) (2021) reflects on how long-established workplace norms were disrupted by the Covid-19 pandemic and considers how to make flexible working work beyond the pandemic. It contains first-hand anecdotes from employers and employees across different workplaces about the shift to flexible ways of working and reflects on the culture change.

The **Institute of Chartered Accountants in England and Wales** has published a detailed set of [Flexible Working Guidelines](#) for accountancy firms, some of which could apply equally to chambers. Much of the ‘guidelines for employees’ (the last section therein) will be of value to barristers who are considering working flexibly.

This 2019 [Forbes article](#) makes the business case for flexible/agile working and reflects on the changing expectations of the workforce in relation to the same.

For **employed barristers** the following are relevant:

<https://www.gov.uk/flexible-working> and <https://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests/html>

**For career breaks:**

CIPD has published a [sabbaticals guide](#) providing advice to employers on offering a period of unpaid leave. Some of the guidance on the aspects of any agreement to take unpaid leave and what policies should cover could be useful to sets of chambers.

## **Themes/best practice**

The following are the themes and best practice for organisations (both sets of chambers and employers of barristers) to consider in relation to flexible working and career breaks:

**Understand the link between flexible working or career breaks, and diversity and retention.**

- The Bar remains an overwhelmingly male space where only 32% of barristers post-15 years call are women. Retention continues to be a massive problem, with the exodus of highly qualified women from the profession showing little sign of slowing down. Expectations of working practices that do not fit with caring responsibilities or health/wellbeing needs has an obvious link with diversity and retention. The financial burden of working part-time/fewer hours, yet being required to pay contributions based on an assumption of full-time practice, can make continuing at the Bar unviable (see the BSB 'Supporting Information' for the BSB Handbook Equality Rules, section 11) or simply undesirable.
- Similar issues arise in relation to the ability to take a career break. Provision needs to be made so that the financial consequences of a break do not place taking such a break out of reach of those who need it.
- Flexible working or taking a career break can be of critical importance to some individuals' work/life balance and wellbeing. Where work/life balance and wellbeing are achieved, individual talent is more likely to be retained. Flexible working arrangements can have a positive impact on retention. Flexible working should be available on wider wellbeing grounds and not just on the basis of the bare regulatory minimum (i.e. for those who can satisfy a 'disability' requirement or who need it in relation to caring responsibilities). The same applies for career breaks.

**Ensure that chambers/employers of barristers have clear policies which set out in clear terms the circumstances under which a barrister may work flexibly or take a career break, entitlement to rent/expenses relief if applicable, and the responsibilities of the barrister and their chambers/employer.**

- Any policy has as a minimum to meet the regulatory requirements of rC.110.3(l) of the Handbook.
- The regulatory requirement is a bare minimum. Commendable practice in this area across other professions and organisations shows that proper recognition of the advantages of flexible working (including part-time working) and the possibility of taking a career break is fundamental to the retention of talent.

**Lead from the top, ensure visibility, and embed flexible working practices throughout chambers / Commit to sustained action through visible leadership.**

- Ensure commitment and clear leadership from the top (Head of Chambers, Senior Clerks, CEO and management committees). Leaders in these and other positions need to understand the relationship between flexible working (given its widest definition, above) and issues of diversity/inclusion/retention, and actively champion the ability of barristers to work flexibly. This includes challenging any attitudes or practices in chambers which are detrimental to barristers who already work flexibly or who need to work flexibly; but also includes talking visibly and openly about their own experiences doing school runs, working part time, pursuing other interests, etc. To attract and retain future leaders, flexible working needs to be seen as normal across chambers with role models/champions at all levels.
- Consider workshops or coaching for those in leadership positions (Head of Chambers, Senior Clerks, practice team leaders, etc) to help them understand how and why flexible working can work, both for individual barristers and chambers as a whole. This includes a proper understanding of the “business case” for chambers’ flexible working policy.
- Make consideration of flexible working a ‘norm’ in chambers, raised at regular opportunities such as practice meetings as a routine agenda item, rather than something which is turned to when a barrister is at ‘breaking point’
- Consider appointing a dedicated individual or committee to monitor how flexible working arrangements are working and whether there are any issues of atmosphere or culture (or anything else) acting to prevent barristers from using flexible working opportunities effectively.

## **Facilitate planning for those barristers seeking to take a career break and support those returning to practice after a career break**

- Allow easy planning with open communication on timing, duration and impact of a career break.
- Agree what level of information and updates should be communicated during the career break.
- Assist barristers in closing down/starting up their practice, including appropriate communication to solicitors and allocation of work to returners.
- Ensure support is provided to those returning to practice, with due consideration to the length of the career break, e.g. is a mentor or “buddy” within chambers required to facilitate re-entry after a considerable period of time away from practice.
- Ensure that the chambers rent/contribution structure does not place a career break out of reach of those who need one.

### **Networks/groups:**

In March 2021 a group of barristers came together to form the [Bar Council Working Group on Flexible Working](https://oldsquare.co.uk/old-square-chambers-form-bar-council-working-group-on-flexible-working/) with the purpose of “liaising with family and maternity organisations such as Maternity Action and Working Families, in hearing and understanding real life stories, in real time, together with hard data on what is going on in the wake of the pandemic, and the lessons that can be harnessed in terms of meaningful law reform. This knowledge and data will be used to support the work of the Bar Council’s Law Reform Committee”.

<https://oldsquare.co.uk/old-square-chambers-form-bar-council-working-group-on-flexible-working/>

# Gender and sex

## Overview

Women have long been under-represented at the Bar and consequently in the judiciary. Efforts have been made in recent times to redress the Bar's gender imbalance. Improvements have been stubbornly slow. Research demonstrates that women remain underrepresented, particularly in the more lucrative areas of practice and silk. The [gender pay gap](#) is a startling illustration of how much work there is to do to improve the position and experience of women at the Bar.

The Bar Council's Race Working Group's recently published '[Race at the Bar: a Snapshot Report](#)' has identified that women from ethnic minority backgrounds face particular challenges at the bar, including:

- Individuals from ethnic minority backgrounds who aspire to be barristers find it harder to secure pupillage when compared to their similarly qualified White British peers.
- At all levels, White male barristers earn the highest fee income, women earn less than men, and Black women earn the least.
- A Black woman publicly funded criminal junior barrister with the same level of experience as a White male junior would bill on average £18,700 a year less, and an Asian woman £16,400 less.
- Barristers from ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar.
- In England and Wales in total there are five Black/Black British female QCs, 17 Black/Black British male QCs, 17 female QCs who are Asian/Asian British and 60 male Asian/Asian British QCs. There are nine women QCs of mixed/multiple ethnicity and 16 male QCs of mixed/multiple ethnicity;
- And, shockingly, Black and Asian women at the Bar are four times more likely to experience bullying and harassment at work than White men.

Key to improving gender and sex equality is the regular monitoring of:

- Income
- Distribution of work
- Marketing opportunities
- Opportunities to lead or be led

The Bar lags unacceptably behind other professions in gender and sex equality. In many instances, the case will be made for positive discrimination to redress the longstanding imbalance.

This section of the guide should be read alongside the sections on Flexible Working, Fair Allocation of Work, Caring Responsibilities and Retention, Race and Religion, and Bullying and Harassment. These particular challenges are often experienced by women barristers.

## **Specific regulatory/legislative requirements**

### **Legislation**

The Equality Act 2010 prohibits discrimination on the grounds of specified protected characteristics. Under section 4 the protected characteristics include:

- gender reassignment (defined in section 7(1) as a person "proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.", discussed as "a transsexual person")
- sex (defined in section 11 as a man or woman)

The main types of conduct prohibited under Chapter 2 are direct discrimination (including combined discrimination on the basis of two protected characteristics), indirect discrimination, harassment and victimisation.

There is a specific provision, section 16, prohibiting discrimination against a transsexual person in cases of absence from work.

Sections 17 and 18 specifically address pregnancy and maternity discrimination.

The legislation includes specific provisions covering barristers and clerks. Under section 47 there are various provisions in relation to:

- the arrangements made for deciding to whom to offer pupillage or tenancy
- the terms on which pupillage or tenancy are offered
- the terms on which someone is a pupil or tenant
- the way in which a pupil or tenant is afforded access to opportunities to opportunities for training or gaining experience or for receiving any other benefit, facility or service
- termination of pupillage or tenancy
- treatment of pupils or tenants
- the instruction of barristers.

The legislation permits positive action to be taken in specified circumstances. Under section 158, where a person reasonably believes that persons with a shared protected characteristic suffer a disadvantage, have particular needs or are disproportionately under-represented,



they may take any step to encourage or enable that group to overcome or minimise the disadvantage.

The Equality and Human Rights Commission, the regulatory body responsible for enforcing the Equality Act 2010 publishes [guidance for small businesses](#), which may assist chambers with ensuring their statutory obligations are met.

The Bar Council has also produced "[BSB guidance on complying with equality and diversity](#)".

## **Regulation**

### Relevant BSB Rules:

#### **rC12**

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

#### **rC65**

*You must report to the BSB promptly if you have committed serious misconduct.*

#### **rC66**

*You must report to the BSB if you have reasonable grounds to believe that there has been serious misconduct by a barrister.*

#### **rC110 Equality and Diversity**

*"You must take reasonable steps to ensure that in relation to your chambers or BSB entity:*

- 1. there is in force a written statement of policy on equality and diversity; and*
- 2. there is in force a written plan implementing that policy;*
- 3. the following requirements are complied with:*

- *Equality and Diversity Officer*
- *Training*
- *Fair and objective criteria*
- *Equality monitoring*
- *Fair access to work*
- *Harassment*
- *Parental leave*
- *Flexible working*
- *Reasonable adjustments policy*
- *Appointment of Diversity Data Officer*
- *Responsibilities of Diversity Data Officer*
- *Collection and publication of diversity data*

Relevant Core duties are:

CD3 You must act with honesty and integrity.

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

CD8 You must not discriminate unlawfully against any person.

Relevant BSB Guidance:

gC96.2 Serious misconduct includes harassment.

gC146 For the purposes of Rule rC110, “remedial action” means any action aimed at removing or reducing the disadvantage experienced by particular relevant groups. Remedial action cannot, however, include positive discrimination in favour of members of relevant groups.

gC150 For the purposes of Rule rC110 above investigation means, considering the reasons for disparities in data such as:

1. Under or overrepresentation of particular groups e.g. men, women, different ethnic groups or disabled people
2. Absence of particular groups e.g. men, women, different ethnic groups or disabled people
3. Success rates of particular groups
4. In the case of chambers, over or under allocation of unassigned work to particular groups

The Equality Rules (2012) were inserted in the Code of Conduct at paragraphs 305 and 408 and are supported by [BSB’s guidelines on Equality Provisions of the Code of Conduct](#).

These rules place obligations on barristers to ensure that chambers have:

- a written equality and diversity policy;
- a written plan for enforcing the policy;
- at least one Equality and Diversity Officer (EDO);
- regular reviews of the number and percentages of its workforce from different groups;
- regular reviews of the allocation of unassigned work by collecting and analysing data broken down by gender;
- processes for investigating the reasons for any disparities in data; and means of taking appropriate remedial action.

The Bar Council produces [guidance](#) for the profession on compliance with the BSB Equality and Diversity Rules.

## **Existing frameworks, materials and resources for the Bar**

Women in Law pledge

<https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/women-in-law-pledge.html>

Although devised to tackle race equality, the Bar Council Framework can be equally applied to tackle gender, sex and intersex equality

<https://www.barcouncilethics.co.uk/wp-content/uploads/2020/09/Bar-Council-Framework-for-Taking-Action-on-Race-Equality-2020..pdf>

[The Bar Council's November 2021 report 'Race at the Bar: A Snapshot report' contains a detailed chapter on retention generally which considers the intersection between sex and race](#)

### **Bar Council Resources**

The Bar Council Ethics Hub contains a number of template policies and guidance documents for chambers including:

Positive Action Guide for Chambers 2020

<https://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/Positive-Action-Guide-Bar-Council-2020-1.pdf>

Fair Recruitment Guide

<https://www.barcouncilethics.co.uk/documents/fair-recruitment-guide/>

Monitoring Work Distribution Toolkit Part 1: Sex

<https://www.barcouncilethics.co.uk/documents/monitoring-work-distribution-toolkit-part-1-sex/>

Positive Action Guide

<https://www.barcouncilethics.co.uk/documents/positive-action/>

Subconscious Bias

<https://www.barcouncilethics.co.uk/documents/subconscious-bias/>

Sexual harassment: information for chambers

<https://www.barcouncilethics.co.uk/documents/sexual-harassment-information-chambers/>

The Bar Council offers a confidential equality and diversity helpline to all pupils and members of the Bar. The direct line telephone number is 020 7611 1426.

The Bar Council facilitates the Equality and Diversity Officers' Network.

The Bar Council regularly provides equality [training, open to barristers and chambers' staff.](#)

### **Research Publications**

BSB, Diversity at the Bar 2020, January 2021

<https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf>

BSB, Bullying, Discrimination and Harassment at the Bar: Qualitative study by YouGov, October 2020

<https://www.barstandardsboard.org.uk/uploads/assets/896b55e0-72b2-4388-be291617735b8a25/ea23e7ad-cc4a-438f-b50d6929f2001c5d/October-2020-BDH-at-the-Bar-full-report.pdf>

## **Other commendable practice beyond the Bar**

### **Law Society**

Diversity and Inclusion Charter

<https://www.lawsociety.org.uk/campaigns/diversity-and-inclusion-charter>

Women in Leadership Toolkit

<https://www.lawsociety.org.uk/campaigns/women-in-leadership-in-law/tools/women-in-leadership-in-law-toolkit>

Law Society, Influencing for Impact: The Need for Gender Equality in the Legal Profession

<https://tlsprdsitecore.azureedge.net/-/media/files/topics/research/women-in-leadership-in-law-report-mar-2019.pdf?rev=8b961a9c1fb046beb2c0396a83a41ead&hash=C0CCAF30E310FBF4F211821F488A7F66>

## **Themes/best practice**

### **Gender and sex equality**

Key to increasing opportunity is the requirement for chambers to monitor income and distribution of work. Such monitoring is a regulatory requirement under the BSB. A successful framework within chambers will require regular monitoring of:

- Income
- Distribution of work
- Marketing opportunities
- Opportunities to lead or be led

It is not overly burdensome to implement such a framework. Most chambers' software allows quick access to this information. Effective monitoring will highlight any areas of concern and allow for positive action to meet the concern. The Bar Council produces several frameworks and toolkits to tackle areas where members are at a disadvantage because of their sex.

If the BSB rules were strictly followed, gender inequality would be significantly reduced. However, for policies and procedures to be effective there needs to be a fundamental shift in culture at the Bar, to encourage openness and anti-discrimination. Meaningful change must begin at a chambers level, requiring motivation for change from senior members and leaders.

Roundtable discussions within chambers around methods for improving equality and diversity would encourage openness, highlight inequity and enable members to actively participate in discussion about gender equality.

The Bar should encourage "champions for change". Equality and Diversity Officers are well placed to begin discussions and highlight inequality in chambers.

### **Menopause**

Most women in the UK have their menopause between the ages of 45 and 55 years, with the average age being 51 years. Menopause will affect all women at the bar in different ways, with most women experiencing some symptoms. It is vital that clerks and management committees/employers are aware of the potential impact menopausal symptoms may have on a female barrister's working life and how best to support her.

Menopausal symptoms include hot flushes, urinary problems, heavy periods, sleep disturbance, fatigue, headaches, lack of concentration, memory problems, palpitations, anxiety and mood swings. Symptoms can vary in severity and can persist for a number of years.

Under the Equality Act 2010, menopause is covered under three protected characteristics: age, sex and disability discrimination. For more, please see the Disability, neurodiversity and reasonable adjustments and Age sections of this Directory.

Practical steps to be taken might include:

Provide awareness training for key parties, including clerks

Facilitating increased preparation time for cases

Avoiding early morning court appearances

Limiting travelling times

Creating a specific policy in order to encourage openness and dialogue around this, often taboo, subject

Helpful resources can be found at:

[Menopause in the Workplace](#)

[Peppy](#) (which has produced a guide with the Law Society, [Experiencing Menopause in the Legal Profession](#))

[Faculty of Occupational Medicine](#)

Please also see the Well-being, Retention and Flexible-working sections of the Directory for further resources.

### **Miscarriage**

Chambers should be aware that employees are entitled to two weeks' leave following the loss of a child. Miscarriage may mean time off sick for women barristers, who may also be entitled to reasonable adjustments if their mental health is affected by the loss. A phased

return or flexible working are encouraged as good practise by [ACAS](#). These considerations should apply to both parents.

Please also see the Well-being, Retention and Flexible-working and Disability, neurodiversity and reasonable adjustments sections of the Directory for further resources.

**UK based legal networks open to the Bar**

<https://www.womenbarristers.com>

<https://www.womenincriminallaw.com>

<https://www.womeninthelawuk.com>

<https://womeninfamilylaw.net>

<https://first100years.org.uk>

<http://www.aawl.org.uk>

<https://cynthiajakes.wordpress.com/wlam/>

Specialist Bar Associations, circuits, Inns and many chambers publish equality and diversity related policies on their websites.

Many of the above organisations offer mentoring schemes to underrepresented groups, including women. Details can be found [here](#).

# LGBTQI+ and gender re-assignment

## Overview

Why is it that some organisations (sets of chambers and employers of barristers) are lauded by the LGBTQI+ Bar and its supporters for their approach to diversity and inclusivity, and others are given a wide berth for their attitudes, or perceived attitudes, to issues affecting LGBTQI+ members of its profession and the community it serves? What action are those chambers in the former category taking which those in the latter category are not? How do we move the majority of chambers sitting somewhere between those points, closer to the first category?

The barriers to protecting and promoting the interests of the LGBTQI+ Bar and its community are long-standing and multifarious in nature. They include:

- Knowledge and attitudinal barriers – lack of understanding/misunderstanding of and/or resistance to the issues and of their relevance, including a failure to appreciate the statutory legal duties and core regulatory duties and/or the ignorance to expand upon them.
- Evidential barriers – a lack of data and/or other evidence.
- Institutional and/or structural barriers – segregation, lack of diversity, exclusivity or perception of old networks and closed clubs.
- Resource barriers – low prioritisation of LGBTQI+ work compared to other equality work.

The statutory provisions and related guidance set out below are the very least of that which is required of chambers and other BSB entities. These laws and regulations represent the bare minimum.

The material set out in the remainder of this section aims to help individuals and chambers (as a whole) make strident efforts to improve diversity within, better their methods of inclusivity and put in place real opportunities which promote equality of treatment and opportunity in a meaningful and sustainable way for the LGBTQI+ Bar.

## Legislation

Part 2, Chapter 1 of the Equality Act 2010 sets out the circumstances in which a person is protected against discrimination (direct and indirect) (Part 2, Chapter 2; Sections 13 to 19, 23 to 25, 108), harassment (Part 2, Chapter 2; Section 26) or victimisation (Part 2, Chapter 2; Section 2) because of a protected characteristic, which includes:



- Section 7 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. Therefore, to be protected from gender reassignment discrimination the person does not need to have undergone any specific treatment or surgery to change from your birth sex to their preferred gender. This is because changing your physiological or other gender attributes is a personal process rather than a medical one;
- Section 12 Sexual orientation (which may also be understood as a wider concept encapsulating sexual identity, behaviour and attraction) - towards persons of the same sex or gender, persons of the opposite sex or gender, or both.

Section 12 of the Act also provides specific protection for transsexual persons who are absent from work because they are proposing to undergo, undergoing or has undergone the process gender reassignment (which is defined in section 7). It prohibits discrimination of such persons by treating them less favourably than a person who was absent because of sickness, injury or some other reason would be treated.

## **Regulation**

The BSB Handbook applies to all barristers (independent or employed) (see also: Supporting Information for BSB Handbook (2019) (section 2)). It states that it is a Core Duty “not to discriminate unlawfully against any person” (Reg. CD8). The Core Duty is supplemented by Reg. C12 which expands and clarifies:

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

The requirement not to discriminate applies to a barrister’s relationship with “any other person” in the course of their professional dealings. Therefore the requirement covers a barrister’s relationship with clerks and other chambers’ staff, clients, court staff, instructing solicitors and their staff, judges, other barristers and pupils – the list is not exhaustive.

Whilst there is no legal requirement for a chambers to have an equality policy or action/implementation plan or an E & D officer, there are regulatory requirements. Reg. C110 states that you must take reasonable steps to ensure that in relation to your chambers or BSB entity there is in force a written:

- statement of policy on equality and diversity; and
- plan implementing that policy.

To ensure compliance with the aforesaid, chambers must take reasonable to ensure that (amongst other matters):

- it has at least one E&D Officer;
- every member of all selection panels – save in exceptional circumstances – will be trained in fair recruitment and selection processes (or to have studied the Bar Council's [Fair Recruitment Guide](#)). It is recommended that at least one panel member should attend an appropriate classroom course on the matter;
- it will conduct a regular review of its E&D policy and of its implementation and take any remedial action necessary;
- has a written anti-harassment policy;
- it has a Diversity Data Officer responsible for data collection, retention, publication, destruction and associated matters.

### **Existing frameworks, materials and resources for the Bar**

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

<https://www.chba.org.uk/for-members/library/professional-guidance/equality-diversity-bsb-guidance-on-code-of-conduct-rules>

BSB Diversity at the Bar Report

<https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf>

Sexuality at the Bar: An Empirical Exploration into the Experiences of LGBT+ Barristers in England & Wales. Mason, M. and Vaughan, S. 2017. London University College London.

FreeBar has published the FreeBar charter, a checklist of basic steps to take to implement best practice with regards to LBGT+ inclusion

<https://freebar.co.uk/resources/>

### **Other commendable practice beyond the Bar**

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

The Equality and Human Rights Commission

A number of studies, research papers and blogs are available providing insights into the existing problems and challenges faced by the LBGTQI+ e.g. discussion as to the reform of the Gender Recognition Act 2004.

[www.gendertrust.org.uk](http://www.gendertrust.org.uk)

Helpline: 0845 231 0505

A UK charity providing support and advice to adults who are Transsexual, Gender Dysphoric, Transgender or those whose lives are affected by gender identity issues.

## **Themes/best practice**

Sexual orientation and gender identity are two separate issues, both in terms of strict legal treatment, and wider considerations. There are clear differences between the issues which affect each group and in respect of barriers, motivations and benefits (individual, chambers-wide and through the service provided). They should not be treated as a single issue.

The guidance set out below is not intended to be exhaustive. It is intended to be instructive of the practical steps which chambers can take to more readily diversify, successfully include and effectively promote and better the opportunities and experiences given to the LGBTQI+ Bar, as a profession and service-provider.

### **Advised action points for chambers:**

- Know your members – create safe spaces, encourage openness, engage in dialogue.
- Lead from the top – Heads of chambers and senior management topic-specific training, positive affiliations, encourage reporting of concerns, consult with members and staff as to what diversity and inclusion should look like, invite strategies for improvement.
- Monitor and collect data - emphasise the need for and purpose of monitoring to include identification of whether and how LGBTQI+ members and staff may be disadvantaged, publish anonymised data on a quarterly basis, invite consultation on that data.
- Create, scrutinise and revise policies and processes – membership changes, staff turnover, the management structure alters, and policies should be actively considered as and when an issue (or potential issue arises) and otherwise once per year as a minimum.
- Improve access to information and training – publish the “bare minimum” legal and regulation requirements on the website and in the chambers’ building, signpost available information and assistance, appoint a single point of contact for information, create a repository for information, mandate equality and diversity training to all staff and members.

- Promote chambers as diverse and LGBTQI+ inclusive - create a “core values” policy, implement diversity initiatives, develop LGBTQI+ networks, affiliations and sponsorships. Be more diverse and inclusive than the chambers with whom you compete!

## **UK-based legal networks open to the Bar**

Bar Lesbian and Gay Group (<http://blagg.org.uk/>)

Free Bar (<https://www.freebar.co.uk>)

InterLaw Diversity Forum - LGBT+ network (<https://www.interlawdiversityforum.org/lgbt-network>)

Middle Temple LGBTQ+ Forum (<https://www.middletemple.org.uk/members/inn-societies-and-groups/lgbtq-forum>)

The National LGBT Bar Association (<https://lgbtbar.org>)

# Mental health and wellbeing

## Overview

There is - perhaps surprisingly - no legal or regulatory requirements on chambers or employers specifically for emotional and mental health, and wellbeing.

Given that barristers, clerks and chambers' staff are exposed to emotionally and psychologically challenging environments on a daily basis, and increasingly so during the COVID-19 pandemic, chambers and organisations are encouraged to consider implementing mental health and wellbeing initiatives.

## Specific regulatory and legal requirements

There are no regulatory or legal requirements for mental health and wellbeing.

## Guidance

The Bar Council partnered with the Inns of Court and the Institute of Barristers' Clerks to introduce the Wellbeing at the Bar (WATB) initiative with the aim of tackling the stigma associated with mental health and encouraging members of the profession to better understand wellbeing and feel empowered to make healthy choices.

### **WATB:**

- Provides barristers and chambers' personnel with the information and skills they need in order to stay well;
- Supports members of the profession through difficulties that affect a barrister's professional life; and
- Provides assistance to those responsible for or who are supporting those in difficulty or crisis.

WATB is underpinned by the Bar Council's Wellbeing at the Bar 2017 report which identified risk factors which may impact on a barrister's performance. WATB is funded by the Bar Representation Fee.

The Bar Council has introduced Certificate of Recognition as a means of acknowledging the efforts made across the profession to support the wellbeing of barristers, clerks and chambers' staff.

To qualify for a Certificate of Recognition, chambers/organisations need to demonstrate a commitment to wellbeing through a policy, programme or initiative, such as education, training, mentoring schemes and/or other support mechanisms.

### **Best practice**

The following best practice is recommended for implementation by chambers and organisations:

- Do not rely on general camaraderie within chambers or your organisation to check on the welfare of barristers, clerks and support staff.
- Encourage open discussions and destigmatise mental health and wellbeing.
- Commit to wellbeing through a policy, programme or initiative and apply for a Certificate of Recognition.
- Ensure that any policy, programme or initiative is sustainable and measurable.
- Knowledge-share good practice with other chambers and organisations.
- Donate to the Bar Representation Fee so that the WATB programme can be supported and remain sustainable.
- Commit to All Rise, a new initiative developed by the Bar Council Leadership Programme to encourage visual allyship and a commitment to challenge bullying, harassment behaviour.
- Assign a mental health champion as a wellbeing ally within chambers.
- Encourage mental health training amongst all staff; upskill senior members of chambers to discuss wellbeing confidently, and to recognise and manage people effectively and spot the signs of poor mental health, such as changes in mood, appearance, performance or behaviour.
- Set up webinars or special interest groups on wellbeing and mental health. Encourage members of chambers/employees to volunteer their own experiences and strategies.
- Lead from the top - it is empowering to see senior members of chambers/managers who are willing to talk about their wellbeing, share their experiences of managing a work-life balance to do so, as it gives permission for other people to have these conversations.
- Allocate one hour per week for a “coffee randomiser” where members of chambers are committed to an informal chat with other members. Include face-to-face time, post-pandemic.
- Encourage boundary-setting by committing to honour an allocated, uninterrupted lunch hour per week, and respecting the importance of taking annual leave.

## **Other Sources**

Bar Council's Wellbeing at the Bar Report 2017

Wellbeing at the Bar

Assistance Programme

Bar Council's Certificate of Recognition

Covid-19 survey of pupils

The Barrister's Foundation

Active Bystander

Twitter: [@AllRiseTheBar1](https://twitter.com/AllRiseTheBar1)

# Race and religion

## Overview

In November 2021 the Bar Council published 'Race at the Bar: a snapshot report' which categorically and definitely evidences, in qualitative and quantitative terms, that barristers from all ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar. The Bar has a long way to go on race equality. In terms of entry to the profession, white applicants are twice as likely to obtain pupillage than those from ethnic minority groups (even when educational attainment is accounted for). Those who enter the profession regularly report being made to feel uncomfortable and experience microaggressions in the workplace and at Bar social events - and calls to the Bar Council's helplines about judicial and other bullying are disproportionately made by Black women. Lawyers from ethnic minority backgrounds are underrepresented amongst Silks and the senior judiciary.

While religion is a distinct area, which has not attracted as much research and attention as race, there are parallels in the challenges faced - as well as the solutions to enable greater inclusion.

The themes and best practice that emerge in relation to race and religion are broadly to:

- Clarify and communicate inclusivity and anti-discrimination
- Commit to sustained action through visible leadership
- Scrutinise all operational processes and policies
- Engage in data monitoring to inform remedial action
- Set tangible commitments
- Ensure an inclusive approach to outreach and recruitment of barristers and staff
- Support inclusive retention and career progression of barristers and staff

The detailed actions that are recommended for each aspect are set below under the heading 'Themes/best practice', after an outline of the sources from which they have been drawn.

## Specific regulatory/legislative requirements

The **Equality Act 2010** prohibits discrimination on the grounds of specified protected characteristics. Under section 4 the protected characteristics include:

- race (defined under section 9 to include colour, nationality and ethnic and national origins); and
- religion or belief (defined under section 10 to include lack of religion or belief).



The **BSB Handbook** includes a **core duty not to discriminate** at CD8. This is supplemented by rC12, which (in parallel with the Equality Act 2010) specifies grounds including race and religion:

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

BSB Handbook rC110.3 requires chambers or BSB entities to undertake **equality monitoring** and associated **remedial action**, including specifically in relation to race:

*You must take reasonable steps to ensure that in relation to your chambers or BSB entity: ...*

*f subject to subject to Rule rC110.3.h chambers or BSB entity regularly reviews:*

*.i the number and percentages of its workforce from different groups; and*

*.ii applications to become a member of its workforce; and*

*.iii in the case of chambers, the allocation of unassigned work,*

*.g the reviews referred to in Rule rC110.3.f above include:*

*.i collecting and analysing data broken down by **race, disability and gender;***

*.ii investigating the reasons for any disparities in that data; and*

*.iii taking appropriate remedial action;*

*.h the requirement to collect the information referred to in Rule C110.3.g does not apply to the extent that the people referred to in Rule rC110.3.f.i and Rule rC110.3.f.ii refuse to disclose it.*

## **Existing frameworks, materials and resources for the Bar**

The Bar Council '[Race at the Bar: a snapshot report](#)' (November 2021) is a comprehensive 60-page document setting out the problem together with concrete solutions for stakeholders (including chambers) to take. The comprehensive nature of the report makes it essential reading if considering how chambers can improve matters for black and minority ethnic barristers. It also contains an appendix with links to further evidence and resources.

The BSB has published an [Anti-Racist Statement](#) (November 2020) which includes a call to action to chambers and BSB entities. It recommends four actions:

- complete a race equality audit to identify the barriers to race equality within a practice;
- design and implement positive action measures, where the audit shows that there is an underrepresentation of, or adverse impact on, people from minority ethnic groups;
- undertake comprehensive anti-racist training for all barristers and staff; and
- produce and publish an anti-racist statement for members of chambers and the public.

The Bar Council has published a [Framework for Taking Action on Race Equality](#) (September 2020) to support the Bar in making progress on race equality beyond simply complying with the BSB's equality and diversity rules.

The Bar Council is also a supporter of [The Charter for Black Talent in Finance and the Professions](#), one of the main aims of which is to drive the recruitment and progression of Black talent at the commercial, Chancery, technical and other civil areas of practice at the privately-funded Bar.

The BSB report [Heads Above the Parapet: How can we improve Race Equality at the Bar](#) (March 2018) at pages 21-2 sets out potential solutions that could be adopted by sets of chambers, aimed at greater transparency around recruitment. A key outcome of this event/report was the formation in 2019 of the [Race Equality Taskforce](#).

The BSB has also recently established a Religion and Belief Taskforce to support its development of strategy, policy and activity relating to religion and belief at the Bar. At the time of writing (November 2021), there is not yet an online presence to which a link can be provided.

### **Other commendable practice beyond the Bar**

The [Equal Treatment Bench Book](#) is an invaluable resource which contains detailed guidance in relation to matters of race (Chapter 8) and religion (Chapter 9), both in the context of the judicial system and beyond, including sections on acceptable terminology and adjustments that may be required to accommodate religious practices.

The Bar Council's Framework for Taking Action on Race Equality draws upon the race frameworks suggested by:

- **Business In the Community:** see <https://www.bitc.org.uk/race/> for details of recommended actions (arising from the MacGregor-Smith Review and follow-up work:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594336/race-in-workplace-mcgregor-smith-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594336/race-in-workplace-mcgregor-smith-review.pdf) and [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746970/BITC Race At Work Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746970/BITC_Race_At_Work_Report.pdf)), as well as <https://www.bitc.org.uk/toolkit/> for various toolkits

- **Chartered Institute of Personnel Development:** see <https://www.cipd.co.uk/about/embrace> for details of their race charter, <https://www.cipd.co.uk/knowledge/tackling-racism-workplace> for their hub of resources on tackling racism in the workplace, and <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/religious-discrimination/factsheet#15396> for suggested good employment practices in relation to religion and belief

Additional examples of frameworks and charters include:

- **Change the Race Ratio:** <https://changetheraceratio.com/>
- **The Race Fairness Commitment:** see <https://racefairnesscommitment.com/>

Further guidance and suggested actions can be found via:

- **ACAS:** see <https://archive.acas.org.uk/index.aspx?articleid=1849> and in particular <https://archive.acas.org.uk/media/4413/Race-discrimination-key-points-for-the-workplace/pdf/Race-discrim-keypoints-workplace.pdf>
- **The British Council:** see <https://www.britishcouncil.org/sites/default/files/guide-race-equality.pdf> and <https://www.britishcouncil.org/sites/default/files/religion-and-belief.pdf>
- **Chartered Management Institute:** see <https://www.managers.org.uk/community/community-networks/cmi-race/> and in particular 'Moving the Dial on Race: A Practical Guide on Workplace Inclusion' (<https://www.managers.org.uk/wp-content/uploads/2020/10/moving-the-dial-on-race-practical-guidance-cmi-race-2020.pdf>)
- **The Law Society:** see <https://www.lawsociety.org.uk/en/topics/hr-and-people-management/promoting-race-inclusivity-in-the-workplace-a-toolkit-for-firms>
- **NOTICED:** see <http://www.noticed.org.uk/wp-content/uploads/NOTICED-Toolkit.pdf>

An example of an initiative organisations can adopt to raise general awareness about tackling racial inequality is the Employment Law Association's version of the [21 Day Racial Equity Habit-Building Challenge](#).

## **Themes/best practice**

The following are the themes and best practice for organisations (both sets of chambers and employers of barristers) to consider in relation to race and religion. Given the comprehensive nature of the Bar Council's ['Race at the Bar: a snapshot report'](#), it is strongly recommended that anyone considering this issue also considers in detail that report, which from page 56, contains a table of recommended actions in the four areas of access to the profession, retention, progression and culture:

### **Clarify and communicate inclusivity and anti-discrimination**

- Set clear expectations that your organisation stands for anti-discrimination and a culture of respect and willingness to change and evolve: publicise this (for example via an anti-racist statement) and ensure it is reflected in behaviour, operations and interactions at all levels of your organisation
- Encourage everyone to develop the knowledge and confidence to talk about and combat discrimination. Prioritise anti-discrimination training, and ensure it covers:
  - avoidance of stereotyping (even where intended as a compliment)
  - differentiation between acceptable and unacceptable terminology
  - vigilance against microaggressions (subtle negative differences in treatment)
- Develop and test your training and stances on issues with input from people with a range of backgrounds, and consider seeking external input
- Build support by creating networks, safe spaces and times for staff and barristers to talk, share experiences and learn from each other
- Consider sharing examples of how your organisation has dealt with incidents of discrimination to demonstrate commitment and inspire confidence

### **Commit to sustained action through visible leadership**

- Ensure clear leadership from the top (Head of Chambers, Senior Clerk, CEO and management committees) and understanding that supporting equality is the responsibility of all leaders and managers
- Create a long-term action plan and consider appointing a dedicated individual or committee to drive progress and hold leaders to account (for example existing EDOs). The recommended actions in the Bar Council's 'Race at the Bar: a snapshot report' could form the basis of such an action plan.
- Encourage all individuals to promote inclusion, and make clear that an individual does not have to be from the minority group in question to act as a champion or take a stand
- Normalise a culture of awareness and recognition of diversity, for example by marking dates from the 'diversity calendar' such as festivals and celebrations of different groups

### **Scrutinise all operational processes and policies**

- Conduct an audit not just with a view to compliance but with the aim of actively valuing and encouraging respectful and positive attitudes to differences
- Embed consideration of equalities into all of your major decision-making processes (for example ensure one person on each decision-making committee has an equality remit)
- Reward individuals for promoting equality, and consider setting related staff performance objectives (for example in relation to how staff approach marketing opportunities, providing support for applications for Silk etc)
- Ensure that barristers and staff understand how to make complaints about discriminatory and inappropriate behaviours, and that your processes are robust

### **Engage in data monitoring to inform remedial action**

- Collect and audit data on a regular basis, regarding your organisation's:
  - workforce profile
  - recruitment and retention of barristers and staff
  - fee income and allocation of work
  - marketing opportunities
  - membership of key decision-making committees.
- Collect data in a way that is granular enough to identify underrepresentation of particular ethnic minority backgrounds - bearing in mind that collecting general data for 'BAME' individuals carries the risk of masking disparities between different groups.
- Consider monitoring not just your figures but barrister and staff sentiment on the question 'I can be myself at work' (for all groups).
- Use the data to investigate and actively address anomalies:
  - consider setting targets for representation to work towards
  - use (and normalise the use of) positive action where supported and sophisticated enough to differentiate between and address the experiences of different groups
- Consider publishing your figures and action plan to demonstrate commitment

### **Ensure an inclusive approach to outreach and recruitment of barristers and staff**

- Critically appraise the breadth and accessibility of your channels for recruiting talent
- Consider targeted advertising and outreach work (for example open days, mini-pupillages and mentoring programmes)
- Engage with access initiatives such as [Bridging the Bar](#) and [#10000 Black Interns](#)
- Make your application processes as transparent and accessible as possible, for example:
  - consider using the Pupillage Gateway

- clarify what any job entails (so that applicants have the opportunity to fully consider whether there is any chance it may conflict with their religion or beliefs)
- inform applicants of your selection criteria
- Inform candidates who is on your pupillage interviewing panel
- Re-examine your selection process and consider measures to combat bias, for example:
  - ensuring everyone involved in recruitment has been properly trained
  - using blind recruiting at first-stage shortlisting
  - adopting questions and software to enable contextual recruitment
  - removing unnecessary selection criteria that may prevent / deter some groups
  - giving greater consideration to factors other than academic achievement
  - ensuring guidelines for purely merits-based skills and competency-based selection are followed (and personal questions at interview are avoided)
  - having visibly diverse panels for recruitment where possible
  - appointing independent assessors of your processes

#### **Support inclusive retention and career progression of barristers and staff**

- Champion talent by offering barristers and staff mentoring or sponsoring, and consider the use of reverse- or mutual-mentoring
- Encourage all members and staff to participate in marketing, training, development, secondment and promotion opportunities
- Adapt methods of delivering such opportunities if current arrangements (for example time of the day or date; use of language or physical contact; dietary requirements and/or service of alcohol) may have the effect of disadvantaging individuals because of their background

#### **UK-based legal networks open to the Bar**

Association of Asian Women Lawyers (<http://www.aawl.org.uk/>)

Association of Muslim Lawyers (<http://www.aml.org.uk/>)

Birmingham Black Lawyers (<https://www.linkedin.com/in/birmingham-black-lawyers-483a8b8a/>)

Black Barristers' Network (<https://www.blackbarristersnetwork.org.uk/>)

Black Men In Law Network (<https://www.linkedin.com/company/blackmeninlawnetwork/>)

Black Women In Law (<https://www.blackwomeninlaw.co.uk/> / <https://www.linkedin.com/in/black-women-in-law-a336a7167/>)

BME@TheBar (<https://twitter.com/BMEatTheBar>)

British-Ghanaian Lawyers Union (<https://bglu.org/about-us/>)

British Nigeria Law Forum (<https://bnlf.org.uk/>)

Hindu Lawyers Association (<https://hindulawyers.org/index.html>)

Midlands Asian Lawyers Association (<https://www.midlandsasianlawyers.org/>)

Muslim Lawyers Action Group (<https://www.mlag.legal>)  
Sikh Lawyers Association (<https://www.sikhlawyers.com/>)  
Society of Asian Lawyers (<https://www.societyofasianlawyers.co.uk/>)  
Society of Black Lawyers (<https://societyofblacklawyers.co.uk/>)  
UK Society of Chinese Lawyers (<http://ukscl.org/>)  
United Kingdom Association of Jewish Lawyers and Jurists  
(<https://www.jewishlawyers.co.uk/>)  
The InterLaw Diversity Forum: Race and Ethnicity Network  
(<https://www.interlawdiversityforum.org/race-ethnicity-bame-network>)

# Recruitment and social mobility

## Overview

There are four underlying principles of fair and effective recruitment: reliability, validity, objectivity and transparency. These principles apply to the recruitment of assessed mini-pupils, pupils, starter tenants, fixed-term tenants and all established practitioners and staff.

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

Save as for exceptions for positive discrimination, all other forms of discrimination in the selection and recruitment process are unlawful.

The financial barrier to entering the Bar has been a long-standing issue with the profession. Without a scholarship from one of the Inns of Court, pupillage award draw-downs or funding from firms, those looking to pursue a career at the Bar will have to face the costs of roughly £18,000 to train for the Bar. This, coupled with the historically tight pool of recruitment from Oxbridge colleges, mean that the Bar's entry requirements inevitably influence intake, shaping an undiversified recruitment model. A 2019 [report](#) into judicial diversity found that 71% of the senior judiciary attended independent schools, and that ten out of 12 Supreme Court judges had been privately educated, and eleven were white men. Particular inequalities are faced at both recruitment and progression stages by Black, Asian and ethnic minority applicants and barristers.

The pitfalls of a homogenous Bar are obvious: public confidence in the Bar will be limited when the overwhelming majority of judges and lawyers are from a monolithic background, and the quality of justice will be weakened when key decision-makers are from the same echo chamber rather than representing the society they serve.

## Specific regulatory/legislative requirements

### **Legislation**

The Equality Act 2010 ("EA 2010") prohibits discrimination on grounds of the protected characteristics of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

[Section 47 of the EA 2010](#) contains specific provisions in equality legislation covering barristers and clerks.



## **Regulation**

The Core Duty not to discriminate is set out in CD8 of the BSB Handbook, “You must not discriminate unlawfully against any person,” and is supplemented by rC12 of the Handbook.

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

Rule rC110 of the BSB Handbook states that you must take reasonable steps to ensure that in relation to your chambers or BSB entity:

- a. there is in force a written statement of policy on equality and diversity; and
- b. there is in force a written plan implementing that policy.

A chambers or BSB entity should have at least one Equality and Diversity Officer. A chambers or BSB entity should also conduct a regular review of its policy on equality and diversity and of its implementation in order to ensure that it complies with the requirements of rule rC110, and takes any remedial action identified in light of that review.

Rule rC110(3)(f) requires chambers to review regularly:

- a. The number and percentage of its workforce from different groups; and
- b. Applications to become a member of its workforce.

Such reviews include:

- a. Collecting and analysing data broken down by race, disability and gender;
- b. Investigating the reasons for any disparities in that data; and
- c. Taking appropriate remedial action.

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

## **Existing frameworks, materials and resources for the Bar**

### **The Bar Council’s Fair Recruitment Guide**

Every member of all selection panels - save in exceptional circumstances - must be trained in fair recruitment and selection processes or to have studied the Bar Council's [Fair Recruitment Guide](#) (currently being updated). It is recommended that at least one panel member should attend an appropriate classroom course on the matter. The guidance applies to recruitment of pupils, starter tenants, established practitioners and staff.

The private study of the Bar Council’s Fair Recruitment Guide is sufficient to satisfy the training requirements in rC110(3)(b)&(c) of the BSB Handbook, though at least one selection

panel member is encouraged to attend a formal classroom course in in fair recruitment and selection skills.

Training is defined in the Handbook as any course of study covering:

- a. Fair and effective selection and avoiding unconscious bias
- b. Attraction and advertising
- c. Application processes
- d. Shortlisting skills
- e. Interviewing skills
- f. Assessment and making a selection decision
- g. Monitoring and evaluation.

Training may be undertaken online or by completion of CPD hours.

Equal opportunities policies in themselves will not bring about equality. Chambers ought to have a system for checking whether their policies are being carried out, and their effectiveness. 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.

gC140 Rule rC110 places a personal obligation on all self-employed barristers, however they practise, and on the managers of BSB entities, as well as on the entity itself, to take reasonable steps to ensure that they have appropriate policies which are enforced.

If briefing practices are identified which appear to disadvantage individuals from particular groups, these should be addressed through the clerks room, failing which, should be addressed by the Head of Chambers.

Recruitment covers the whole process of filling a vacancy, from seeking applicants to making the selection decision. Selection includes application forms, short-listing, and any mechanisms used to help the decision-making process, such as selection tests, references and interviews.

Examining the application rates of different groups enables chambers to gauge whether application rates are proportionate to these groups' representation in the Bar Professional Training Course (for pupillage), among suitability qualified barristers (for tenancies) or the population from which selection is to be made (for chambers' staff). If any any-representation is identified, chambers may wish to consider using positive action to encourage applications from members of those groups.

At shortlisting stage, chambers should check whether the representation of different groups among those shortlisted is proportionate to their representation among applicants. Should there be a disparity, the reasons for different shortlisting rates ought to be investigated.

At interview stage, the success rates for different groups should be examined, and any differences should be investigated to ensure that there is no direct or indirect discrimination in the treatment of candidates.

At appointment stage, 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.

Useful links to resources:

[Bar Council Equality, Diversity and Inclusion](#)

[Bar Council's I Am The Bar Campaign](#)

[Social Mobility Foundation](#)

[Pegasus Access and Support Scheme \(PASS\)](#)

[Bridging the Bar](#)

[Social Mobility - Criminal Bar Association](#)

[Covid-19 creating new challenges for social mobility at the Bar \(barcouncil.org.uk\)](#)

[COVID-19, the Bar and social mobility | COUNSEL | The Magazine of the Bar of England and Wales \(counselmagazine.co.uk\)](#)

['Race at the Bar: A snapshot report'](#)

### **Other commendable practice from beyond the Bar**

The Social Mobility Foundation is a charity which aims to make a practical improvement in social mobility for young people. The SMF works with young people from all across the UK in the years prior to and during university. Its Aspiring Professionals Programme offers tailored support across 11 career sectors including law. Chambers, employers and individual barristers can support the programme in the form of mentoring, internships, skills sessions or pro bono support.

<https://www.socialmobility.org.uk/>

## **Themes/best practice**

The following best practice is recommended for implementation by chambers and organisations:

- Attending annual anti-discrimination training ought to be compulsory for all members of chambers and employed barristers.
- Have a published written statement of policy on equality and diversity, as well as a written plan implementing that policy, including practical, measurable steps to take should there be any breaches of policy.
- Be held accountable for the equality and diversity policy, and not merely pay lip-service to it.
- Commit to compiling equality monitoring data regularly and address any anomalies.
- Use data to improve retention and progression at the Bar.
- Consider blind-sifting CVs to eliminate unconscious bias against socio-economic attributes.
- Organisations'/chambers' mini-pupillage committees should be encouraged to accept applications from diverse backgrounds.
- Set up a meaningful mentoring scheme.