

## **CONSULTATION RESPONSES SUMMARY**

The Consultation on the equality provisions of the Code of Conduct lasted for just over 3 months and closed on March 1<sup>st</sup> 2011. There were 41 responses in all, each emailed to the equality inbox.

This paper sets out each proposal in turn and gives an overview of responses given. Where relevant, extracts from individual responses are provided.

### Acronyms

**TBC:** Training for the Bar Committee (Bar Council)

**PPC:** Professional Practice Committee (Bar Council)

**EHRC:** Equality and Human Rights Commission

**TECBAR:** Technology & Construction Bar Association

**SRA:** Solicitors Regulation Authority

**BC EDC:** Bar Council E&D Committee

**AWB:** Association of Women Barristers

**LPMA:** Legal Practice Managers Association

## SUMMARY OF RESPONSES

### a) Do you agree that the new regulatory equality provisions should be integrated within the Code of Conduct?

The majority of respondents agreed with this and there was not a great deal of discussion or comment on this question.

#### Comments

**SRA:** We agree that the BSB is right to update its existing regulatory provisions to reflect more accurately the obligations for barristers and chambers introduced by the Equality Act 2010. Placing the updated provisions into an updated version of the Code of Conduct must, however, be carefully managed to avoid creating unmanageable or excessive regulatory requirements for the barristers' profession. We will shortly be publishing the new Handbook to apply to all those we regulate, replacing in its entirety the existing Solicitors' Code of Conduct 2007 with a less prescriptive and outcomes-focused regulatory framework. As part of the development for our new Handbook, we had originally proposed a Principle requiring all those we regulate to *"...run your business/carry out your role in the business in a way that promotes equality and diversity and not discriminate unlawfully in connection with the provision of legal services"* Feedback received during the consultation process suggested that the Principle went beyond what is required by legislation and potentially amounted to an obligation to discriminate positively in having to 'promote' equality. We reviewed the wording of this Principle so that it removes reference to legal duties – the current proposed version instead requires those we regulate to *"...run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity."* We would recommend the BSB considers the wording of equality provisions carefully in integrating them to its Code of Conduct.

**Thomas Dillon Chambers:** Do not think that the proposed provisions should be included within the CoC or that they should apply to all barristers.

It is not a proper function of the Bar Standards Board to impose particular social values on a liberal profession. Policing equality has nothing to do with professional standards, but rather is an intervention on behalf of a particular view of society as a whole. The law governing discrimination speaks for itself and does not require expansion or reinforcement.

**Alexander Chambers:** Do not agree these rules should be integrated within the Code because breach of most of the provisions renders barristers liable anyway in law. It is not appropriate to make this professional misconduct. Many provisions have nothing to do with members of the public – thus there is no public interest justification.

**Law Society:** Integrating these new regulatory equality provisions within the Code of Conduct will ensure that equality and diversity policies, monitoring and effective implementation plans are developed in the medium to long term (present to 2013). We note that there is evidence of significant non-compliance with the current equality provisions in the Code of Conduct and that the current non-mandatory guidance has not been effective in addressing equality and diversity issues. On this basis, we believe that integrating equality provisions with the Code of Conduct would be a much more effective method of ensuring equality provisions are addressed by the profession.

**b) Do you agree that the proposed new Conduct Rules should apply to all practising barristers including employed barristers and those who are managers or employees of recognised bodies?**

The majority of respondents agreed with this provision. Some of those who disagreed with the rule were under the misapprehension that the BSB intends imposing the practising rules on the employed bar as well as the conduct rules. It may be that if this misunderstanding were explained, these respondents would not disagree with the rule.

Comments

**PPC:** The Conduct rules should apply only to those in self-employed practice. It is too onerous on those in employment, particularly if junior, to require them to take any step to “ensure” the existence of such policies as set out, given the lack of control or influence they may have on the regulation of the place in which they work.

**Chair, Bar Association for Local Government and the Public Service:** Local authorities are already ahead of these proposals so these rules should only apply to the self employed Bar.

**Bar Disability Group CPS Disabled Members Network Co-Chair:** There should be no distinction drawn between the different branches of the Bar. Those employed in Public Service will already have similar

provisions within their Contracts of Employment. However, those Barristers who work in-house for small firms of Solicitors, or other private companies, may not be subject to such provisions.

**Bar Council Legal Services Committee:** We do not see the logic in extending the core duty so that it applies across the profession, when it is not considered necessary to also extend the Practising Rules which are intended to support the Conduct Rules. Further, since employed barristers and managers of recognised bodies already have to comply with the general law as well as the requirements of their approved regulator in this area, there is a powerful argument that they should not be subject to dual regulation, which would be the result of this proposal.

**Law Society:** We believe that embedding equality and diversity within an organisation requires all parties to be able to identify discrimination and to have knowledge of the steps that can be taken to reduce the risk of unfair bias or discrimination. Also, all parties must be able to promote equality of opportunity within their work place, and this will help to ensure that the best individuals for positions within chambers are not removed from consideration merely on the basis of prejudice. Ensuring that all staff clearly understand the business benefit of equality and diversity, both in terms of managing chambers and in winning business, is essential to ensure that good equality and diversity practices develop and are accepted in the long term as a key part of effective business performance.

**c) Do you agree that the obligations should apply not just to a barrister's own chambers or other place of business but also to any ProcureCo through which s/he obtains business?**

#### Comments

**18 Red Lion Court:** To stipulate that the obligations apply "to any ProcureCo" raises difficulties in that such organisations may employ people who are not members of the Bar and therefore as individuals are outside the scope of the Code. In our view it is sufficient that the obligations should apply to all practising barristers. They would each have an obligation to ensure that the organisations through which they work (be they Chambers, partnerships or ProcureCos) complied with the letter and the spirit of the Code.

**3 Raymond Buildings:** This could only apply if ProcureCos are regulated by the BSB.

**Doughty St Chambers:** As a ProcureCo is simply one type of incorporated entity which may procure legal services through contract, it seems illogical to impose this limitation on a barrister without seeking to apply the same obligations to any other entity which procures (or supplies) legal services, such as LDPs or, shortly, ABSs. Also, a barrister may only be providing legal services to a lay client through membership of a panel of barristers which has an agreement with a ProcureCo (or other entity) and not be a manager or owner of that entity him/herself; it would be wholly unreasonable to place such a limitation on the barrister.

**Law Society:** The Equality Act 2010 requires primary organisations to take reasonable steps to ensure that agents working on their behalf do not discriminate. There is now a clear line on third party and vicarious liability for acts of discrimination outlined in the Equality Act 2010. Therefore the approach taken by the BSB would be beneficial to barristers and their partners/suppliers in assisting them to fulfill this legislative requirement. In addition, taking this approach to any ProcureCo companies is in line with current best practice on equality and procurement and effective contract management.

- d) Do you think it is appropriate that the proposed rules place a personal obligation on all self-employed barristers to take all reasonable steps to ensure that the rules are complied with as opposed to putting the onus only on Heads of Chambers or those with the responsibility for the administration of chambers?**

Many respondents required further clarification on this rule in particular further information on how the BSB intends that the rule should be enforced and is meant by “reasonable steps”.

#### Comments

**PPC:** The aim is good but we question the practicalities in some areas. In the case of self-employed barristers in chambers it is easy, with the equal status of a tenant in chambers, to address more senior members and the management committee on the inadequacies of any policy on the question of equality and diversity. For those in employment, particularly the very junior or those who might be affected by the policy, it is much more difficult to challenge or question the policy or position of your employer. While it may be right to impose a personal duty in some areas of work, and while the duty is only to take reasonable steps to ensure a written policy and implementation plan is in force, these may be significant matters to raise as a junior employee in a firm or company. It may be that some thought has to be given

to the position of employed barristers with regard to the conduct rule and perhaps extending the non-applicability of this rule in the same way that the practicing rule does not apply to them.

**CPS E&D unit:** “Reasonable steps” needs to be defined. In our experience monitoring the progress of Chambers against our CPS E&D Expectations Statement, Chambers tended to make quicker progress when the management and barristers shared responsibility and worked together on addressing equality issues. Collective responsibility will lead to faster and deeper positive change in culture and practice.

**Falcon chambers:** Whilst in theory it is attractive that all barristers bear some responsibility for E&D issues in their chambers in practice it is very difficult to see how for example very junior members of chambers can do anything to ensure compliance with some of the rules (i.e. the makeup of pupillage/tenancy selection panels). Placing the responsibility with Heads of Chambers/Management Committees has the advantage of clarity.

**Chancery Bar Association:** Do not agree that this is appropriate. The obligation should be placed on the Heads of Chambers and those with responsibility for the management or the administration of chambers. The proposed amendment might seem attractive at first blush, but in our view it is both impractical and impracticable to impose an obligation on all self-employed barristers.

The objections to the proposed amendment are based both on practicality and on principle. How would such an obligation be monitored? What would the sanctions be for breach of the obligation? How would those sanctions be enforced?

- It is difficult to see that very junior members of chambers could do anything to ensure compliance with some of the rules (such as the make-up of pupillage or tenancy selection panels).
- It is unclear how the obligation will apply in the case of a barrister for whom taking reasonable steps involves doing nothing and thus whether the amendment will actually achieve anything.
- It is entirely unclear how the obligation will impact on a barrister as his or her career progresses, save that it appears that what is envisaged is an obligation the nature and content of which changes over time, and that the nature and content of the obligation will vary depending on one’s position in chambers where that position is not one relating to the management of chambers to which one has

been elected as a matter of choice, but which is governed solely by one's position on the board outside the door; such a Protean concept has no place in a code of professional conduct.

**Association of Women Barristers:** This proposal seems attractive, but in reality it should only be a personal obligation placed on barristers of more than three years' Call, and should not apply to pupils.

We are concerned that the new proposal does not deal with what might be "reasonable" for the most junior barristers and therefore gives unsatisfactory weight to the apprehension of such barristers that seeking to raise concerns on equality and diversity issues informally and formally will adversely affect their careers.

**John Bignall:** It would be reasonable to require members of Chambers (who are not the Head of Chambers or the/an Equal Opportunities Officer and do not have a role in the administration of Chambers) to satisfy themselves that Chambers has an Equal Opportunities Policy and to familiarise themselves with it. However, it would be burdensome to require individual members to have to critically assess the policy and its implementation. It is not obvious what would be gained by imposing such an obligation. If an obligation is to be imposed in the terms proposed, it must be made clear what an individual barrister must do to comply with it.

There needs to be more guidance on what steps are reasonable. It must be made clear whether an individual barrister other than Head of Chambers, Equal Opportunities Officer and those involved in Chambers' administration is obliged critically to assess the existing Chambers policy or not, and whether he/she is obliged to take steps to ensure that it is being implemented in any respect other than those directly concerning him/herself. The obligation on all barristers to take all reasonable steps to ensure that "there is in force a written plan implementing the policy referred to in 5.2R(1)" is unclear regarding what obligation this is actually imposing. A policy complying with the existing guidance goes beyond statements of principle into implementation, but this seems possibly to suggest something further, the nature of which is not entirely clear.

**TECBAR:** Agree and consider this an important and worthwhile modification.

**Legal Services Committee:** We doubt whether it is realistic for all self-employed barristers, for example, junior members of chambers or those working part-time or from home, to take steps ensure that their

chambers comply with the rules. We also consider that enforcement of the new rules will be more effective if taken against Heads of chambers and those responsible for running chambers. Further the core duty and Practising Rules will ensure that every member of the profession contributes to the promotion of equality and diversity without the need for imposing an additional personal obligation.

**Legal Adviser General Counsel's Office, Rail and London Division:** "Reasonable steps" should be accompanied by fuller guidance. The guidance could mention, for example, that the reasonableness of the steps will depend, not just on one's position within the organisation, but on how secure the employee's job is in practice, or the effectiveness of remedies against any unfair pressure on behalf of the employer - including disadvantage in finding another position if one was dismissed and sued one's employer. The guidance could also specify that employees are not expected to join, or take responsibilities within, a trade union. Another helpful thing to mention would be that "position" includes, not just status and power, but also, for example, the employee's specific role within the organisation.

**3 Raymond Buildings:** We think the current obligations on Heads of Chambers, those with responsibility etc, are sufficient, and strengthened by the recently-introduced obligation on all Chambers to appoint an EOO. We consider 5.2R to be unnecessary and unworkable and in any event we wonder how compliance with this individual obligation would be monitored. If 5.2R is retained, presumably 5.3R could only apply if the 'business' is regulated by the Bar Standards Board?

**Doughty St:** Although individual barristers should be under an obligation to report any suspected breach of the rules, responsibility for compliance should lie with the Head of Chambers, as it does with other aspects of the Code, and this responsibility will be exercised in practice according to the management structure of the set of chambers. It would be impractical, both for the members and for those managing and administering chambers, to place such responsibility on each individual member.

- e) **Do you agree with the proposed requirement that from 1 January 2013 the member/s of chambers with lead responsibility for the recruitment of tenants, pupils, clerks and mini-pupils and at least one member of every selection panel except in unforeseen and exceptional circumstances, who may be the same person, must have received recent and appropriate training in fair recruitment and selection processes?**



Most respondents were in favour of this proposal. Many wished for clarification on what is meant by “recent and appropriate”.

**i. Do you believe the 1 January 2013 deadline to be realistic and achievable? / Do you think the Bar Standards Board should regulate the training undertaken for this purpose?**

Some, but not many, respondents felt the deadline to be realistic and achievable others felt it was not see comments below. Comments on BSB regulating training are set out below.

Comments

**SRA:** The BSB should aim to identify the outcomes it would wish to achieve as a result of training provision and focus efforts on achieving this through these new requirements. There is potential for this type of requirement, however laudable, to be regarded by some participants as a tick-box exercise rather than understood as contributing to wholesale change across the profession.

**PPC:** The concern here is in the difficulty in finding such training, paying for it and persuading any member of chambers to undertake it. The concern may be that those in management committees start to become in breach of regulations simply because nobody can be prevailed upon to accept this position.

The Professional Practice Committee supports in principle the relevant recommendations on selection procedures for pupillage and tenancy in Lord Neuberger’s report on Entry to the Bar (recommendations 40-43); however, there would need to be much more information about the cost, availability and accessibility (in terms of time spent in training) of training in fair recruitment procedures before there could be a complete assent to this proposal. A better approach may be to require chambers to ensure that there is a policy for fair recruitment and to ensure that those undertaking the recruitment tasks are aware of it and abide by it in all recruitment decisions. A single member of the management committee could be trained and oversee the policy and its implementation; all barristers involved in the selection procedure would need to be fully briefed. This is a small dilution of the proposal but is likely to be much easier to implement.

**TBC:** With regard to mini-pupils, a distinction should be drawn between mini-pupillages which form part of a chambers recruitment process (“assessed” mini-pupillages) and other mini-pupillages which take the form of unassessed work-experience and which do not warrant the same degree of regulation. This

distinction is already reflected in the fact that the requirement to advertise mini-pupillages and the need to comply with the existing Equality and Diversity Code applies only in respect of mini-pupillages which form part of chambers' selection procedures.

There is plainly a need for clear definition in due course of: (i) what training will be considered by the BSB to qualify as "appropriate" training for the purpose of compliance; and (ii) how regularly relevant individuals should be required to undergo such training. These two factors will influence the extent to which the BSB's proposals will impose administrative and cost burdens on chambers. There should be further proposals and consultation by the BSB on these points of detail.

The Committee considers that it would be reasonable and not unduly burdensome for relevant individuals to have received appropriate recruitment training within the last 3 years and that such training should consist of a course of not more than 1 day in length.

In light of the fact that the proposal is for the BSB to regulate contraventions of the training requirements as Code breaches, we consider that it is appropriate and desirable for the BSB to regulate the required training. The BSB's role in this regard should be (i) to formulate course requirements in the form of a list of topics which are required to be covered; and (ii) to approve applications from potential course providers, such as Bar Council Member Services and commercial providers.

**Law Society:** We believe that this deadline is achievable. There are already excellent and effective on-line equality and diversity, disability equality and unconscious bias training courses. These are available at a low cost and will allow even the smallest chambers and self-employed barristers to meet their commitments with little financial impact. However, if the BSB are going to impose a deadline, it is important that they consider the implications of this including whether they are willing to impose sanctions for non-compliance. One possible approach for the BSB would be for them to require chambers to report on the completion of E&D training. We do not believe that the BSB should regulate training as this would be both resource and time intensive for the regulator. It should be the responsibility of barristers to find delivery methods of training to suit their individual chambers. Instead of mandating training, the BSB could publish a set of learning objectives that must be covered by any training undertaken and offer support and guidance to the profession on training.

**Middle Temple:** Although there is no objection in principle to the specific individuals receiving recent and appropriate training in fair recruitment and selection processes voluntarily the BSB should avoid making this mandatory thereby avoiding any unnecessary and inevitably expensive changes. At a time of increasing costs and decreasing income, the BSB should aim to minimise both direct costs to practitioners and also costs to itself which will be passed on to barristers. The proposed changes to the code of conduct would make any unfair recruitment or selection a violation of the code of conduct. To make such training mandatory would be a step too far.

**EHRC:** The Commission suggests that the Bar Standards Council (sic) should be encouraging chambers to achieve the target by the earliest possible date and certainly no later than 1 January 2013. The proposal that the Bar Standards Council regulate this training appears to be sensible if it is to monitor the sector's compliance with the rules.

**BC EDC:** Yes, in so far as the BSB regulates courses that are accredited with CPD hours. The Committee recommends that recruitment and selection courses should be eligible for CPD hours when they meet the BSB's definition of "appropriate" training content.

**20 Essex St:** Training should not be onerous as it will cost chambers time and money (2hrs every 5 yrs & incl online training options would be acceptable). Deadlines are realistic and BSB should regulate training

**Sarah Hornblower:** If training made available on circuits then 2013 deadline is realistic but if not it's hard to get to London from provinces with work pressures. Training should be free/low cost and carry CPD.

**CPS E&D:** Training is open to interpretation and may need to be defined e.g. face to face training, e-learning, briefings, seminars, guidance provided. The requirement could be clearer on defining 'recent' as 'in the last X years' and 'appropriate' as covering the key elements seen to be necessary. CPS experience was that training on equality and diversity practice was not widely undertaken by staff or members in Chambers and training was not routinely updated to take account of developments in equality legislation

Agree that both deadlines are achievable but given that Equality Act came in October 2010 this leaves a gap which leaves chambers/members vulnerable. The BSB should set minimum standards in terms of content and frequency, and have some form of accreditation process for trainers to ensure the quality of the training provided.

**Sally Hawkins** – The guidance should be amended so that it states training should accord with the core requirements of the Recruitment Toolkit and must be at least 2 hours long. It may be delivered through face to face sessions or online.

**Inner temple:** All members of the Bar involved in recruitment processes should have focused training to ensure that these selection processes use objective and fair criteria. It is also important that clerks also receive some form of training. Recruitment training should be run by institutions of the Bar with external expertise, to ensure that it is relevant to the profession. Inner Temple would welcome the opportunity to work with the BSB to assess institutions that are best placed to do so.

Training must be designated properly from the outset so as to ensure that it is fit for purpose. As current training schemes exist in some employed Bar organisations, this should be recognised by the Bar Standards Board so as not to impose any unnecessary requirements on such individuals.

**Chancery Bar Association:** Do not object to BSB being the body which should regulate the training but do not think that the BSB should itself be the training provider. Do not think that the training should be exclusively external and that the Board should permit internal training within chambers in appropriate circumstances e.g. by cascading by those members of chambers who have already been trained themselves. Consideration should also be given to the possibilities of interactive e-training and to the award of CPD points (perhaps 1.5-2 hours) to such training.

**AWB:** All barristers involved in selection panels ultimately should undertake training in fair recruitment and selection processes. The BSB should regulate this through the CPD programme. We believe it must be appropriate for the senior clerk (or equivalent, or Head of Human Resources in employed practice) to be required also to undertake this initial mandatory training.

Agree in principle with the 2013 deadline but this depends on precisely when the amended Code of Conduct is to come into effect. We believe it is important that at least 18 months is permitted for this initial training to occur in order that those affected can have sufficient opportunity to attend adequate, and potentially free, accredited training. There is a real opportunity to exploit computer-enabled technology to enable all practitioners to access on-line training in their own time at no cost to themselves. For example, the Crown Prosecution Service now undertakes a range of training for both legal and non-legal staff accessed online at a time of their own choosing.

**TECBAR:**

- Why refer to clerks and not members of staff generally?
- The initial selection process of candidates for mini-pupillage or pupillage (and possibly lateral recruits) is likely to be done quite quickly, by a relatively junior member of chambers, on paper only. It is difficult to see how it can be done in any other way in circumstances where there are inevitably many more applicants at least for pupillage than can be interviewed. But the selection process at that stage is likely to be highly relevant to a number of diversity related issues, possibly more relevant than selection at interview stage. It is difficult to see how such a process can be referred to as involving a “*selection panel*”. It there appears to be outside the scope of this proposal and to that extent the proposal is flawed.
- Likely standard of training - Personal experience suggests that training in relation to diversity matters can be of variable quality. Quality of e-training can also be variable. Training to assist those responsible for recruitment effectively is therefore not necessarily straightforward. Unless adequate arrangements are in place to ensure the standard of training then this proposal is in danger of being ineffective.
- The deadline itself should be perfectly viable for the limited objective identified. However for the reasons indicated above there may be doubts as to the likely effectiveness of this proposal, unless:
  - (1) measures are taken to ensure that selection at the paper stage (ie not involving a selection panel) is also governed by appropriate training;
  - (2) crucially: adequate steps are taken to ensure that the training is truly effective.
- The BSB or some equivalent body should regulate the training.

**2-3 Grays Inn Sq:** BSB should regulate training but not provide it. The BSB could identify minimum topics to be covered and min standards.

**3 Raymond Buildings:** We agree that those with lead responsibility should receive the training but think they should be allowed to 'cascade' it to the appropriate members of selection panels (see below). 'Selection panel' should apply to panels involved in the interview process and not to the 'sifting' panels at the application stage, as long as they are given clear criteria and guidelines for shortlisting defined by those with lead responsibility. Our sifting process is clearly defined, with criteria printed on the marking form for every candidate and guidelines at the front of every file of applications. The EOs also carry out dip sampling to ensure that shortlisting is consistent.

There needs to be clarification on the term 'mini-pupils' used throughout this document and we suggest this should apply to 'assessed mini-pupils' only, i.e. those undertaking mini-pupillages which play some part in the selection procedure, as opposed to the vast majority of mini-pupillages which merely offer an opportunity to observe Barristers' practices.

The BSB should oversee the design of the training for those with lead responsibility and accredit the cascade training scheme devised by each set thereafter. It would then be regulated.

**Monckton Chambers:** We agree that those involved in recruitment and selection ought to be familiar with both best practice and legal requirements.

A large number of staff and members are involved in recruitment (depending on the nature of the recruitment as well as practical and time considerations). We estimate that 60-80% of our chambers' members and staff would therefore require training if the new rules were to be implemented as proposed. The BSB should make available (cheaply and conveniently) appropriate training sessions/DVDs/ soft and hard material and/or to provide chambers with ready-made training templates to carry out such training themselves. In the absence of such practical assistance, the requirement is both unrealistic and unachievable (whatever the deadline).

**BC EDC:** Given the demand for mini-pupillage places, we do not think a rule is practicable that requires selection of all mini pupils, including those seeking informal work experience, through a formal process and by a panel that has been trained in fair recruitment, although we encourage this. It is the case that mini-pupillage experience increases the chances of a successful pupillage application. Open and fair

recruitment processes and training of panel members should be compulsory where mini-pupillage forms part of an assessed pupillage application process, as recommended in the Neuberger Report.

We believe that some chambers will want to delegate the development of recruitment processes to a Chambers' Director or Practice Manager. In these cases we recommend that there is a duty on Heads of Chambers to ensure staff members receive appropriate training.

**f) In light of the Neuberger recommendation that all barristers involved in selection be trained, would you agree with a requirement that by 1 January 2014 every member of all selection panels involved in the recruitment of tenants, pupils, clerks and mini-pupils must be trained in fair recruitment processes?**

A substantial number, though not the majority, of respondents were in agreement with this proposed rule. The majority of respondents were unclear. Concerns were raised about the burden this rule places on chambers.

#### Comments

**PPC:** This seems hugely onerous, something recognised by the consultation document. Such a proposal would risk having insufficient members to make for effective recruitment and therefore having the unintended consequence of stalling recruitment of appropriate people or increasing the number of "exceptional circumstances" where recruitment is undertaken outside the regulation. The recommendation we would make is that the original less onerous requirement is in fact the better one.

**TBC:** The Committee agrees with this requirement, save that the requirement should not be applied to mini-pupillages other than "assessed" mini-pupillages forming part of a chambers' recruitment procedure for the reasons stated in response to Question 5e above.

**EHRC:** The Commission supports the recommendation provided that the training is fit for purpose and participants are aware of how to use positive action powers and their obligations to make reasonable adjustments. Clearly if more than one person on every selection panel is aware of 'fair recruitment processes', it will be easier to ensure they are both followed and understood. The Commission also believes that it would be valuable if equality training extended further than the fair recruitment and

encompassed matters such as equality pay gaps, harassment, positive action, making reasonable adjustments and equality issues in procurement

**LPMA:** Training for whole panel is problematic because:

- It is difficult enough to get people to sit on panels without adding this extra burden.
- It is onerous financially
- It may dilute quality of training if all trained
- Cascaded training may be the answer.
- Recruitment Toolkit (RT) should be good enough so that it can be read and no further training is required.
- How long is sufficient for this training? 1hr or a day? Need to specify.
- Need guidance on what training is considered acceptable.
- Would like to know when RT will be published.

**Ann Buxton Hardwicke Chambers:** Too burdensome, if the first requirement is complied with then it's not needed.

**Sarah Hornblower:** If this goes through it will limit number of people willing to be on panels. In many cases you have to draft a person on to a panel at the last minute because the delegated person has been detained at court. This will make it harder for smaller chambers like mine.

**AWB:** WE agree but we also bear in mind the potential cost burden on individuals and Chambers /organisations in undertaking this training. We firmly believe that all subject to the requirements must be given the opportunity to attend free accredited training courses for this purpose, provided by the BSB in conjunction with the Bar Council if necessary. This could be provided simply and for free online.

**18 Red Lion Court:** We do not believe there is a need to have every single member of each panel trained, provided there is active input from the trained members of the panel. The cost and administration in training all selection panel members would be extensive, and would act as a deterrent to those who are relied upon to give up their time for free to chambers. The practical aspect for chambers may be that a narrow group of members are the only ones who can act as interviewers.



**John Bignall:** A worthwhile aspiration but to make it mandatory would pose substantial practical problems. The nature of a barrister's job means that there has to be an element of flexibility in the composition of selection panels (our panels for interview for pupillage typically comprise about 6 people, and the interviews are held one after another in a short block of time, generally two long days at a weekend), and for every member to have to have undergone training could pose real problems with convening a panel, with potentially major repercussions if the panel could not be altered at short notice.

**TECBAR:**

- The additional year is not long given the number of people that are likely to be involved, for example where a member of chambers has to be brought into a panel at short notice.
- By making such training a requirement there is a risk that those trained would be stuck as panel members for longer than otherwise, recruitment is already a burdensome task.
- It would be inappropriate and pointless to impose such a burden unless there was some guarantee or at least likelihood that the training required will be truly effective.

**3 Raymond Buildings:** This would only be viable if there was a 'Cascade' training scheme similar to the Equality and Diversity Cascade Training Scheme already in existence. We use this successfully and effectively at these Chambers and it would not be a difficult step to provide additional in-house training in recruitment. We would see this as a great benefit because we could tailor the training to our areas of practice and our criteria for selection.

**Doughty St Chambers:** It is felt that requiring all such barristers to receive formal training would be both prohibitively time-consuming and also unnecessary. Bringing the processes to the attention of those involved in recruitment and selection could be achieved using appropriate briefing notes; ensuring this is done and ensuring that all procedures are properly adhered to in each instance should lie with the (trained) panel chair.

**BC EDC:** We do not think it necessary that all panel members should be trained in all aspects of the development and operation of fair recruitment processes. We recommend that training for panel members covers as a minimum interviewing, evaluation and making selection decisions. It should refer to the causes of bias and how to avoid it. Training methods should be flexible to meet a variety of chambers' circumstances and means. We recommend that all members of chambers who take part in

the shortlisting of candidates should be briefed to the “appropriate” standard in fair and objective shortlisting methods.

**g) Do you agree with the proposed requirement that chambers recruitment and selection processes use objective and fair criteria?**

Most respondents unequivocally agreed with this requirement without further comment. Those who disagreed are quoted below. Most of those who were unclear did not respond specifically to this question.

Comments

**Chambers of Thomas Dillon:** This is a loaded question to which one can only respond in the negative. The Consultation proceeds on its own assumptions about what is fair. It is a commercial matter for Chambers to decide how to proceed with “recruitment” (apostrophised because Chambers are not employers) within the law and it is no business of a professional standards body to control it.

**John Bignall:** To impose a requirement that could be read as excluding the use of all criteria that might be perceived as containing a subjective element would risk overly and unnecessary constraining the selection process. There must be a degree of trust in the ability of barristers responsible for selection to identify the important characteristics of the person being assessed, and freedom for them to do so, for effective recruitment to take place. Guidance, and equal opportunities training, should mitigate the possibility of that being applied unfairly. It would be better to require that the selection be made objectively and fairly, and to provide non-mandatory guidance as to how that can be achieved in practice.

**Alexander Chambers:** Without a definition of “fair” or “objective” it is difficult to agree. For example many chambers recruit according to income a prospective tenant is likely to generate. This is not intrinsically fair.

**h) Do you agree with the proposed requirement that chambers must collect and analyse the actual numbers and percentages of barristers and pupils in chambers from different groups on an annual basis and that these groups must include as a minimum race and gender?**

Most respondents agreed with this rule. One felt that this should be voluntary and agreed with i & ii on this basis.

- i. **Do you agree that this should be done annually?** 5 said yes, 2 said it would be better to do this biennially.
- ii. **Do you think that data should also be gathered on disability?** 18 said yes including one who said data should be broken down by impairment.

#### Comments

**SRA:** Chambers should collect and report this type of information on an annual basis. The regulatory justification for this is clear, as the BSB acknowledges at paragraph 3.20 of the consultation paper: *“...unless chambers collect this data on a systematic basis, they will not know whether certain groups are under-represented or suffering an apparent disadvantage.”* Where possible we would recommend that information should be collected for all protected characteristics, including information regarding socio-economic backgrounds, rather than the proposed minimum of race and gender.

**TBC:** Broadly, we agree with the proposed requirement. However, there may be an argument for submitting pupillage and/or new entrant statistics annually (on the footing that pupil members of chambers will be subject to annual change) but submitting information on tenant members of chambers less frequently – say, every 3 years – since tenant populations are unlikely to be subject to significant annual fluctuation.

There is a need for the BSB to define clearly what will be expected in terms of analysis of data in order to ensure compliance. Likewise, there is a need for clear definition of the sorts of remedial steps that chambers and individuals would be obliged to take if disparities are identified. The BSB should make further proposals and invite consultation on these points. The proposed rules are not specific on these points and the current Guidelines document is not prescriptive. See, by way of example only, the following proposed rules and guidance relating to applications to chambers:-

Proposed rule 3.17,p70: *“Your chambers must regularly review...(b) applications for mini-pupillage, pupillage and membership of chambers.”*

Proposed rule 3.18, p70: *“This review must include, but is not limited to: (a) collecting and analysing data broken down by race and gender; (b) investigate [sic] the reasons for any disparities in that data; and (c) taking appropriate remedial action.”*

Guidance para 21, p33 of 66: *“Where under representation of particular groups is identified [i.e. at the applications stage], chambers may wish to consider using positive action to encourage applications from members of those groups.”*

It is unclear from the above whether, in identifying underrepresentation in applicants to chambers, chambers is required to take positive action or not in order to comply with the proposed rule. This lack of specificity would be acceptable in the context of guidance but is unacceptable in the context of the proposed mandatory regime.

**Law Society:** Over time, monitoring should be expanded to capture all protected characteristics outlined in the Equality Act 2010.

**EHRC:** For maximum effectiveness, the Commission believes that monitoring should be continuous and should occur whenever it is reasonable to do so (e.g. when applying for training etc.) As a minimum, chambers should gather data on race, gender, disability (by impairment category, if possible) and age, and should actively consider profiling by other protected characteristics.

Bearing in mind that there are now nine protected characteristics, the Commission is unclear as to why only mandatory gender and race (and possibly disability) monitoring is contemplated (albeit as a minimum). This seems to reflect the position under the existing public sector duties which is about to change. Where possible and appropriate, chambers should consider monitoring for all protected characteristics, bearing in mind that there are particular issues around sexual orientation, religion and belief and gender reassignment which require careful thought before any monitoring is introduced.

**Ann Buxton (Hardwicke Chambers):** Should not include mini-pupillages. Urge caution in this area as care needs to be taken not to overburden chambers. Annually would be fine but every 3 years would reduce burden. 3 years better as chambers move very slowly, so statistically changes in chambers composition over 1 year are likely to be small. Concerned about disability monitoring as some people can be sensitive about revealing this information to staff/colleagues.

**Chambers of Thomas Dillon:** Do not agree with these requirements. These matters are for individual Chambers. Such a requirement has nothing to do with professional standards. The notion of “under-representation” on which the Consultation proceeds is flawed and any data will certainly be misused to the detriment of the profession.

**David Chrimes (Bar Disability Group):** Some may balk at this but experience from other organisations has shown that this sort of statistical information is vital. Sometimes it requires such evidence to stimulate the under-achievers into action. It is absolutely imperative that Disability is included. Of all the “Protected Groups” under the Equality Act, the Disabled are the most under-represented Group at the Bar, compared to their numbers in society as a whole. Statistics should be gathered regularly.

**Inner Temple:** Greater guidance is needed on what is considered a mini-pupil. While many chambers strictly define work experience placements versus mini-pupillages, this is not standardized across all sets. Unless defined from the outset, this could potentially lead to confusion and conflation. While an exact definition would be difficult, defining some parameters could, at the very least, allow for more accurate comparisons.

**Chancery Bar:** Agree with this and with requirement to monitor annually. However it must be recognised that populations of chambers are relatively static. Data ought to be collected in relation to each of the protected characteristics, but there should be no obligation to gather data on social mobility as in practice the data is likely to be difficult to gather or analyse. There should be no obligation on individual barristers to answer any particular questions.

**AWB:** There should be a requirement for biennial (not annual as this would be burdensome) data collation (including data on race and gender but not disability as this would be burdensome) to assist in the monitoring of selection of pupils and starter tenants, and also of allocation of work to pupils and all tenants (not merely tenants in their first three years and members returning from parental leave).

**Matrix:** Agree but, in order to make it easier to do this, it would be helpful if a standard process could be devised which can be used for other agencies that require such monitoring data too (e.g. the Legal Services Commission, or its successor, and the Crown Prosecution Service).

- Data should be gathered on disability
- Monitoring requirements should extend to all 9 protected characteristics.
- This should include data in relation to members of staff employed by barristers' chambers.

**Monckton Chambers:** Need to explain purpose of, such monitoring.

- Is it expected that every year members and staff are to be asked to complete a questionnaire?
- What is meant by "analyse"? What actions might arise from the monitoring?
- What value has the data if members and staff decline to provide the information? Our experience suggests that this information is considered by many as private, not in the least since some of the required data is not usually sought and, if not illegal, perceived as illegal when requested as part of a recruitment exercise.
- We are further alert to the danger that care should be taken not to favour one perceived "inequality" over another, thus creating an equality hierarchy with race and gender currently occupying the top slots.

**Doughty St:** We see considerable value in this kind of monitoring and currently collect data (principally on race, gender and disability) on pupillage, tenancy and staff recruitment and the current membership of Chambers.

There is concern that gathering equality and diversity data from tenants and pupils can prove difficult as many might not wish to disclose personal details in what is always a relatively small working environment.

It is generally practicable to collect data on race, gender and disability, but it might be possible to collect data, on more or on all of the eight diversity characteristics, by requiring monitoring forms to be submitted to the BSB annually with CPD returns. This would provide a level of anonymity that cannot be achieved within any set of chambers and hence should allow meaningful analysis across a range of characteristics. It is accepted that such analysis would only apply to the Bar in general, rather than at the level of each individual set.

**BC EDC:** We agree that chambers be required to collect, analyse and store securely this information on an annual basis. In smaller chambers numbers may not change notably between years but the objective should be to monitor patterns and trends over a number of years so that chambers can assess the effectiveness of their equality policies and consider the need for permitted action to correct enduring underrepresentation of any group. Guidance is given to assist chambers on collecting and assessing data and on the Data Protection Act requirements in the Guidelines to the Equality and Diversity provisions of the Code of Conduct and a sample monitoring form. There is evidence from BSB monitoring of chambers and the CPS that many chambers are not analysing data collected. This suggests the need for detailed guidance on how to review data and what steps to take to encourage wider diversity. In addition to further guidance, we recommend online analysis tools and sample forms to assist with the implementation of this rule.

**i) Do you agree with the requirement that all chambers must collect equalities data on applications for mini-pupillage, pupillage, and starter tenancies and analyse the success of different groups at each stage of the selection process on an annual basis and that these groups must include race and gender as a minimum?**

- i. Do you agree that this should be done annually?** 6 said yes one said no.
- ii. Do you think that data should also be gathered on disability?** 12 said yes, one said no due to concerns that this would be considered too sensitive.

2 respondents said that if these provisions were imposed they would be discouraged from taking mini-pupils. One respondent said that they did not think mini-pupils should be covered by this rule. One respondent said that it should be voluntary.

#### Comments

**PPC:** It is agreed that data as proposed be collated and monitored. Further analysis would be onerous, though any obvious bias in recruitment should be addressed formally as part of an annual process. It is agreed that race and gender are a minimum requirement for monitoring and it is the case that disability should be a group considered.

**TBC:** Data gathering should be by way of completion of a form or such other means approved by the BSB. In relation to mini-pupillages data collection obligations should apply only to mini-pupillages which form part of chambers' selection process and should include information as to (1) those applying for mini-pupillage and (2) those short-listed for and offered mini-pupillage. In relation to pupillage and starter-tenancies, data collection should include details of (1) applicants; (2) those successful at each stage of the recruitment process; (3) those offered positions; and (4) those accepting positions offered.

**EHRC:** The Commission strongly supports this proposal because initiatives to open up the profession require a thorough evidence base to identify barriers and solutions at every stage of career development. The Commission would add disability and age to the requirements. Chambers should also be encouraged to actively consider profiling by other protected characteristics, for the reasons given above.

**LPMA:** Only run a few mini pupillages per year. If this rule is introduced then it is most likely that we will not run mini-pupillages anymore. The MP application process is manual so to introduce monitoring on this would be burdensome unlike pupillages which are done through the portal so are easier to monitor.

**Sarah Hornblower:** Do not think that chambers should be required to gather data on mini-pupillages, this is too onerous, our chambers gets thousands of letters in hard copy without such information.

**Chancery Bar:** Without data collection and analysis it is difficult to see how chambers will become alert to and deal with barriers to diversity. However many chambers recruit starter tenants exclusively from their pupils and do not run open tenancy competitions. Many of the chambers within the Association recruit only one pupil with a view to one tenancy being offered at the end of that year. In those circumstances analysis of data on recruitment of a starter tenant would add nothing to the data analysis of applications for pupillage.

We consider that the compulsory collection and analysis of data should be limited to applications for and selection of **assessed** mini-pupillages only. Some chambers may offer mini-pupillages on a first come, first served basis, so there is no selection procedure and analysis of data, other than in terms of numbers of applications, would be meaningless.



It is often the case that individual members of chambers offer or provide a mini-pupillage or work experience to a personal contact, be that children of a friend or colleague or a spondee who has been allocated to them through an Inn sponsorship scheme. Mini-pupillages or work experience in chambers give an advantage to a candidate when it comes to making an application for pupillage. Whilst we recognise that 'private' mini-pupillages may perpetuate barriers to socio-economic diversity at the Bar, on occasion such mini-pupillages may increase diversity, such as if a mini-pupillage is provided to a spondee who has been allocated through the Inn's sponsorship scheme who might not otherwise have an opportunity to undertake a mini-pupillage.

**John Bignall:** If monitoring is to be compulsory it should be carried out annually, as that matches the recruitment cycle. To require monitoring of applications for mini-pupillage would impose a substantial burden in terms of carrying out the monitoring. Need further guidance on what is meant by (i) investigation of the reasons for disparities in the data, and (ii) the taking of remedial action. There is proposed to be an obligation which it will be potentially impossible to know how to fulfil. The obligation should at least be limited to considering what the reasons may be for apparent disparities in the data, and considering what remedial action might be taken and implementing it insofar as it is reasonably practicable to do so.

**3 Raymond Buildings:** Yes to all (with the proviso that 'mini-pupillage' means 'assessed mini-pupillage'). One point worth noting is that monitoring data on individual pupillage applications is not currently available through the Portal, which only provides summary data at each stage. OLPAS used to provide monitoring data on individual application forms but this ceased two or three years ago. We need data per individual (removable from the application form) otherwise we cannot analyse the process from the very first stage. Currently we send monitoring forms to candidates who are shortlisted for interview but have no method of analysing those who are not shortlisted. We also feel that sending our own monitoring form at the shortlisting stage causes concern amongst candidates which could be avoided if the data provided to the Portal were made available.

**Monckton Chambers:** What is to be done with the data collected?

In so far as the Pupillage Portal system offers assistance in collecting this information in respect of pupillage applications, Chambers agrees with the proposal. That agreement is, however, conditional upon the system continuing to provide that assistance.

The administrative burden in collecting data on third six month pupillages and “starter tenancies”, although far more onerous, is one that our Chambers would be able to shoulder.

We do not currently have systems in place to collect equalities data from mini-pupillage applicants, nor do we have spare resources to do so. During the past 12 months, we have received approximately 200 applications. Each year, we receive more applications. If Chambers were required to undertake the monitoring task, it might become necessary to impose upon mini-pupil applicants the completion of standardised application and monitoring forms. It would further be necessary to invest in analytical tools.

It is not a requirement for a pupillage applicant to have done a mini-pupillage. The number of those who have done mini-pupillage who are subsequently offered pupillage (or who even make it to second interview) is very small. We do not know how this compares with other sets, but if it is typical, the value to chambers is limited. It may well be that, if the proposed rule were to be imposed, chambers would (*e.g.*) invite for mini-pupillage only those successful in securing a pupillage interview. That would meet the proposed new requirements, but would not achieve the BSB’s aims (and, indeed, would achieve the opposite).

**Doughty St:** Routinely collecting and collating equalities data for mini-pupillage applications is impractical, given the number of applications received. Doughty Street Chambers does not conduct “assessed” mini-pupillages and has no requirement in its pupillage selection criteria for attendance at mini-pupillage. Considering the very substantial administrative burden that would be involved, if such equalities monitoring were made compulsory, we would have to seriously consider whether conducting any mini-pupillages was worthwhile.

**BC EDC:** Where chambers have formal recruitment processes for mini pupils diversity data should be collected and reviewed. Requiring chambers to select all mini-pupils, including those seeking informal work experience, through a formal recruitment process may not be practicable.

- j) Do you agree with the proposed requirement that chambers that take pupils must regularly review the allocation of work to pupils, tenants in their first three years and members returning from parental leave?**

- i. **Do you agree that this data should be required to be broken down by race and gender only?** Two respondents agreed with this. Two felt it should cover disability as well. The CPS, Law Society and Falcon Chambers proposed monitoring by all protected characteristics as set out in the Eq. Act 2010. The EHRC suggested adding disability and age, whilst confining parental leave monitoring to gender only.

#### Comments

**SRA:** For members returning from parental leave, the proposal for a regular review of work allocated to them must be supported, and we would recommend that regular reviews should take place over two years.

**PPC:** It is agreed that chambers should monitor and review the allocation of work among pupils and junior tenants as proposed in this question. There is a concern that the requirement as set out in the relevant practicing rule seems to require more than review. The BSB should clarify the rule to ensure that it is review and monitoring that is required, and not that chambers should have in place any interventionist procedure for altering the work allocated against the wishes of clients and other members of chambers.

**TBC:** We agree with the suggestion that work allocated to pupils and tenants in their first three years should be regularly reviewed. We note the recommendation in the Guidance that work allocation should be reviewed by the senior clerk and chambers' Equality and Diversity officer quarterly. We agree with a quarterly review in relation to pupils. We consider that a less frequent review may be appropriate in relation to tenants in their first three years of practice: we suggest a review twice yearly on the basis that more frequent review may work against the identification of long term trends and may place too great a burden on chambers' Equality and Diversity Officers (who are likely, in the main, to be individual tenants volunteering for or appointed to the role).

**Law Society:** We believe that the data collection should be broader and there should be monitoring across all the protected characteristics outlined in the Equality Act 2010. Monitoring race, gender and disability is a basic level of monitoring and the BSB should be encouraging barristers to engage with best practice. At the Law Society we are considering how we can ensure that additional monitoring covers all protected characteristics and are committed to ensuring that members take a best practice approach to equality and diversity monitoring. We are keen to work with the BSB to promote the importance of

robust equality and diversity data for policy formulation purposes, attracting and winning business, and effectively managing diverse workforces within a changing legal sector landscape.

**Inner Temple Bar Liaison Committee:** Allocation of work is difficult to monitor and may lead to divisive situations in chambers.

**20 Essex St:** Need to be sure this sort of monitoring actually assists in redressing inequality – pilot the scheme first to see if it works.

- How can this be done in a way that does not impose unduly time consuming regulatory burden?
- Need to see how this can be done with most chambers' software
- Guidelines on this are broad brush and simplistic and definition of "source of work" is not clear, is this instructing solicitor or clerk?
- If BSB requires a simple comparison of fees and type of work across members of chambers of comparable seniority this may be workable, but if more finely tuned monitoring is required then the BSB needs to justify the regulatory burden.
- Do not think should be broken down by race/gender as unlikely that there are ch's where all members of one gender or BME group are disadvantaged in allocation of work. Discrepancies are more finely tuned.

**LPMA:** Unallocated work only constitutes about 10-20% of all work that comes in. This is the only work that is free to be allocated.

**David Chrimes (Bar Disability Group):** The word "review" has several connotations. If it means something rather like "monitor", I would support this for all the categories mentioned. However, if it means something more like "control", then it would be almost impossible to enforce. Professional Clients may wish for a particular Tenant to represent their Lay Client. There would be serious ethical consequences in restricting this right. Such monitoring must include Disability and Sexual Orientation at the least. The Bar has been very successful in increasing the number of women and BME Barristers. The same cannot be said for the Disabled.

**Falcon Chambers:** As a starting point this seems sensible. The review should include disability as well. Allocation of work should be reviewed at all stages and such reviews should cover all protected characteristics not just the three identified.

Individual chambers should put in place systems for the objective review of the allocation of “unallocated work” which comes into a set of chambers as a result of a prior telephone call by solicitors seeking a recommendation or simply as a result of instructions being received by post for allocation without prior contact.

**Chancery Bar:** Work allocation monitoring ought to take place across chambers and should not be restricted to pupils/tenants in their first 3 years of practice. Data should make clear whether or not work was allocated to a particular barrister because the solicitor requested such a barrister by name.

**AWB:** Allocation of work monitoring should cover:

- all tenants
- volume of work/type of work and area of work
- geographical location
- race and gender only.

**John Bignall:** At my set work is not ‘allocated’ by clerks in the sense of their selecting the member or members to whom it should be offered so identifying and implementing a viable system for monitoring of work allocation poses real problems in practice, as well as the risk of patronising and invading the privacy of individual members. It is not really clear there is a need for such monitoring. It should be made clear that any review regarding ‘work’ allocated to pupils should refer only to work from external sources, i.e. instructions (or internally in terms of devilling). The nature of pupillage is such that it would be impracticable to review allocation of work which pupils undertake purely as part of their learning process in pupillage.

**Matrix:** The BSB should clarify what is meant by “allocation of work”. In practice, it may be difficult to measure. For example, if it were interpreted to refer only to an active decision-making process by a practice manager or clerk to give a set of papers to a barrister when no specific barrister has been requested by a solicitor, we fear that it will capture only part of the picture that needs to be monitored.

We recommend that objective criteria should be set out and methods of measuring the pattern of work in a set of chambers devised which are as easy to apply in practice as possible. For example, consideration should be given to using the following: (1) the work done in a year as measured by fees earned by each member of chambers; and (2) the number of new cases started in a year by each member. However, we caution against over-reliance on a criterion such as case numbers, since what will be of interest is the quality of work and not only the quantity.

**Alexander Chambers:** For non-traditional sets such as Alexander Chambers this requirement would be unworkable and could result in small sets having to close. We have practice groups, such as Alexander Employment, whose members invest heavily in advertising and then take up the work that flows from that outlay and effort. This should not be deemed to constitute discrimination. Alexander Chambers would be less likely to recruit if we had to start monitoring and allocating work to tenants (or pupils) who have not contributed to advertising costs or actively obtaining work for themselves or Chambers EG by lecturing or writing articles.

**Doughty St Chambers:** There should be an obligation to ensure the fair allocation of work, but the mechanisms for achieving and monitoring this should be left to each individual set of chambers. A set which has a team structure, properly provides supervisors and mentors and gives the opportunity for practice review does not need processes prescribed to suit every set of chambers

**k) Do you agree with the proposed requirement that all chambers must have a policy on parental and adoption leave?**

The vast majority of respondents agreed with this requirement and very few had any comments to make about it. Most replied with a simply “agree” or “yes”.

Comments

**SRA:** As the BSB has found this is an area of concern, we agree with this proposed requirement and would emphasise the importance of policies required in this area to focus on achieving transparent and fair practices. One other possibility could be for the requirement to accept a more basic document (which could still be tested against certain standards by the BSB) explaining why a written policy is not

yet possible, but confirming a commitment to review that position annually to account for changing workplace / staff needs.

**Chambers of Thomas Dillon:** The question betrays a misunderstanding of the nature of the profession. The reasons cited in the Consultation for such a requirement do not stand up – there is no reason why the obligations imposed on employers should be replicated in relation to groups of independent advocates who do not employ one another. It is precisely this type of obligation which drives down the value of women’s services in the economy, so reinforcing the inequality that the consultation evidently deplores. Paradoxically, such laws reduce the value of female workers, as an employer must assume that in a proportion of cases he or she will not obtain the same reliability and persistence from a female employee and will suffer uncompensated losses as a result of the exercise of statutory maternity rights.

**Middle Temple Hall:** It is essential to bring the Bar in line with the statutory position.

**David Chrimes (Bar Disability Group):** Any parental leave policy should also cover pupils.

**CPS E&D Unit:** Parental Leave policies should include references to carers.

**BC EDC:** We agree that all chambers should have such a policy. We further recommend that there should be strict requirements about the form of the policy – that it should be written – and its availability – that it should be available on any shared drive on a chamber’s network but at the very least written copies should be available from the Head of Chambers and the E&D officer. A copy of the policy should be provided to each new pupil and tenant on arrival. The BSB should specify the minimum contents of such policies.

**Law Society:** It should be noted that some guidance from the BSB might be necessary to assist chambers in understanding how to mitigate any impact on fee generating business.

- l) Do you agree with the proposed requirement that chambers must offer their members a minimum of 6 months parental leave, or leave following adoption?**

- i. **If not, would you agree with a requirement chambers must offer members a minimum of three months parental leave or leave following adoption?** 5 respondents expressed agreement with this proposal.

#### Comments

**SRA:** This may be a viable proposal in order to ensure chambers' parental leave policies meet a sufficient standard. Whatever the BSB decides, it must consider a balanced approach between requirements that make the profession genuinely accessible to all sections of society while respecting the right of each chambers to manage itself.

**Law Society:** We do not see any reason for chambers to go beyond statutory requirements. As proposed, EU regulations would consider 14 weeks a reasonable time period, and there is no reason for chambers to extend this without evidence that it would tackle discriminatory outcomes. Furthermore, additional strain on fee generation would not be welcomed by barristers.

**EHRC:** In light of numbers of women leaving the self-employed Bar, and the substantial decline in women pupils, the Commission strongly supports this proposal which should be chosen in preference to the proposal for three months parental/ adoption leave.

**John Bignall:** What is slightly unclear is whether the proposal is intended to apply not only to parents with primary responsibility for care of a child but also those who do not have primary responsibility. I would be against it extending to parents who are not the primary carer unless a very clear reason were given as to why that were necessary or appropriate.

**Anonymous:** This proposal is more appropriate for employees. The 6 month minimum may (undesirably) become outer limit of time period for some chambers. In our chambers a barrister can take leave for whatever period they choose and return within any period but their room may be used by others in their absence and there is no right to return to same room.

**Chancery Bar:** The BSB must define "parental leave" in the context of the self-employed bar. There are three principal issues for self-employed barristers:

- (i) The period during which a member is relieved of the obligation to pay rent and/or expenses



- (ii) The period during which chambers is required to keep a particular room or desk space available for the relevant member of chambers
- (iii) The period during which a self-employed barrister should have a right to return to chambers without being required to re-apply for tenancy.

Any prescribed minimum periods of “leave” should be different in each of the 3 respects identified above. In particular, the period during which a member of chambers is to be relieved of expenses may be shorter than the period for which the chambers is required to keep open the member’s room/desk space. Moreover, we consider that the period during which a self-employed member of chambers should have a right to return to chambers without being required to re-apply for tenancy should sensibly be greater than the other 2 periods. We note that the consultation paper refers to “parental leave” as a period which commences with the birth of a child. Some consideration should be given as to whether a barrister should be in a position to give notice so that the period of parental leave can commence before the actual birth.

**AWB:** All chambers must have a policy on parental and adoption leave, offering their members an absolute minimum of 6 months parental leave or leave following adoption but preferably a minimum of 52 weeks’ parental or adoption leave.

**Legal services Committee:** Although a longer period of parental leave will help to retain practitioners at the self-employed Bar, many smaller chambers and those doing lower paid publicly funded work are likely to find it difficult to manage financially with the loss of a member’s income for six months or more. We therefore disagree with the proposed six months minimum and agree with three months suggestion.

**2-3 Grays Inn Sq:** This should be the case for a female member of Chambers: there should be agreed periods of parental leave for a male member but this need not be the same period of time. Obviously, the discretion of Head of Chambers can apply where appropriate.

**Alexander Chambers:** The Requirement should not be mandatory for chambers with low turnover. Large chambers should pay for people to have parental leave. If cheques are coming in whilst off work there is no reason to be exempt from paying fees.

**m) Do you agree with the proposed requirement that where rent is paid on a flat rate basis, parental leave must be rent free?**

Most respondents agreed with this proposal.

- i. Would you agree with a rule requiring that the parental leave period must be rent free irrespective of whether the chambers rent is calculated as a percentage of fees earned or is a flat rate payment?** 5 respondents agreed with this rule and four disagreed with this rule.

Comments

**SRA:** A possible alternative could be for the proposed requirement to be enforced but with some flexibility inherent for chambers to recruit on a short-term basis to cover the place of a barrister on leave. Another option could be for the requirement to be enforced but chambers provided with an 'opt out' mechanism if they can provide valid justification, e.g. financial reasons, for not meeting the requirement.

**PPC:** However, we are concerned that if such rent payment holiday is only to be applied in limited circumstances, namely referable to the way in which the 'rent' is calculated, any particular definition of such rent must be a workable definition. Chambers must be able to clearly ascertain whether any relevant rent falls within any restriction to be incorporated in the code. In this regard, we have serious concerns about the proposed reference to 'flat rate' rent and we refer to and adopt the comments made by the Chancery Bar Association in their response to this consultation in relation to the significant difficulties inherent in the proposed terminology.

**Law Society:** We think that this (m) would be difficult as those in practices who do not operate flat rate rent would be at a disadvantage. Also chambers could change the way they operate rents to avoid the impact of having a rent free parental/adoption leave period. We agree with m (i) however, we note that the BSB may wish to consider ensuring that the period of rent free leave does not exceed the 14 week period suggested in the EU Directive.

**Anonymous Chambers:** Disagree with M i)

- In % chambers, members who take a career break find rent reduces and ceases as receipts reduce which ensures fair contribution to costs of chambers
- Rent free for % chambers would amount to a subsidy paid by all to barristers on leave who received benefit of fees without paying share of rent on those fees – this may be seen as unfair
- We acknowledge the cashflow problem for those returning especially with childcare costs at time when no receipts coming in. Our solution is that those returning after PL may defer payment of rent for up to 6 months so they can wait until receipts come in to pay rent. However we think deferral should not be a requirement but should be best practice

**Middle Temple Hall:** Where chambers rent is calculated as a percentage of fees earned through work executed outside of the parental leave period even though it is received during the parental leave the commission should be paid. Equally where the member is on parental leave but is a chambers where members pay commission and a flat rate, only the flat rate should be waived, as a minimum – clearly it is open to Chambers to implement and agree more generous provisions if they wish.

**LPMA:**

- Need to be clear about whether rent includes expenses or not
- Need to be clear about whether flat rate means just room rent
- Might be useful to set a minimum value of room rent
- Include in guidance examples of good practice, including calculations

**Chancery Bar:** Do not agree that the entire such minimum period of parental leave should necessarily be rent/expenses free.

- A longer rent free period may cause difficulties for smaller chambers and/or chambers who predominantly engage in publicly-funded work;
- Too great a period might have an adverse effect upon the recruitment of women in such chambers.
- The calculation of chambers rent/expenses varies considerably between chambers and further thought needs to be given to identifying what, precisely, the relevant member of chambers is to be excused from paying during any prescribed minimum period of such leave.

The term “flat rate” is ill-defined and is likely to lead to considerable confusion. Whilst we understand that the intention is to exclude ‘percentage of income’ calculations, as a definition we consider that the concept of “flat rate” is unworkable given the extensive range of unique expense structures adopted by

different sets of Chambers. For example, it is not clear whether the proposed provision would encompass those chambers who calculate rent and expenses on a mixed system (with part of expenses being calculated on an earnings basis and partly on a square footage basis for rent) and/or those chambers who pay expenses on the basis of “banding”. Further, whilst some chambers pay expenses on the basis of a fixed percentage of a barrister’s earnings, what is intended to be the position where the quantum of those expenses is fixed periodically (whether monthly, quarterly or annually) on a forward basis but referable to historic income? So far as fixed costs are concerned, there ought to be a payment holiday. We can see more of a justification for there being no “payment holiday” where expenses are calculated on a historic earnings basis because there will be a reduction in payments on a forward going basis, as earnings will have fallen during the period of parental leave.

**AWB:** Subject to a lesser requirement for smaller sets, where rent is paid (or a proportion of it can be calculated) on a flat rate basis then parental leave must be rent free and for period of at least three months.

**Legal Services Committee:** Agree with rent free provision for flat rate chambers. Do not agree with rent free period irrespective of how rent calculated. This misunderstands the basis on which such rent is charged. Such rent relates to the period in which the work is performed and not the period when the payment is made by the barrister to the chambers. This can be illustrated by a simple example:

*X chambers charges for all chambers’ outgoings, including rent, staff salaries etc. by charging 20 per cent of fees earned on work performed from chambers when received. Mrs. Y spends the whole of January working from chambers on a case for which the fee is £10,000. Mrs. Y then starts maternity leave on 1<sup>st</sup> March and is away from chambers for 6 months. Suppose the fee for the case is paid on 10<sup>th</sup> April. Mrs. Y is then liable to pay 20 per cent of £10,000 (£2,000) at the end of April. In this example the “rent” payment of £2,000 is rent in respect of Mrs. Y’s membership of chambers in January, not April.*

This may also be illustrated by observing the liability in such chambers of those who retire or take judicial appointments. Almost always they receive some fees after they have left chambers. In a chambers such as that in the above hypothetical example, they will pay the appropriate percentage in the months after they have left when the fees are received.

Therefore a proposal that, in the above example, X chambers should not be paid anything by Mrs. Y in April is on proper analysis a proposal that barristers should retrospectively have a pre-existing liability to

chambers written-off. We think there is no justification for such a proposal: it will impact upon the finances of smaller chambers disproportionately, especially where more than one member is on parental leave at any one time; is also unfair to the barristers who do not happen to benefit from it and is certain to be bitterly resented by chambers who charge rent on a percentage basis.

We also wish to point out that percentage rent arrangements are already very beneficial to barristers who take parental leave. Firstly, by its very nature, such an arrangement means that no rent is ever charged by reference to a period when such a barrister is away from chambers. Secondly, it benefits a barrister who has practised to a reduced extent on their return to chambers, as if the barrister earns less than her previous income in her early months back she will pay commensurately less rent.

**Alexander Chambers:** This requirement should not be mandatory for chambers with low turnover. Large chambers should pay for people to have parental leave. If cheques are coming in whilst off work there is no reason to be exempt from paying fees.

**Monckton Chambers:** A blanket imposition of a “no-rent period”, whatever the charging method, would place a heavy financial burden on sets. Imposing the rule on sets where rent is calculated as a percentage of fees received (or earned) could also work unfairly: it is inevitable that at least some fees earned before parental leave would be received during the leave period; the barrister would therefore receive the double benefit of (1) not paying rent on fees actually received during absence and (2) paying reduced rent because of reduced earnings on return. It is our view that chambers must be allowed the freedom to decide how to incentivise returners following a parental absence.

It might be beneficial if the BSB were to put forward a number of options from which chambers could choose. The aim must be for chambers to make available to returning members facilities and services which at a (relatively low and absorbable) cost to chambers make a positive difference to the returner’s circumstances and practice development.

**Doughty St:** There are a range of ways in which different chambers collect “rent” from their members. In those circumstances where a “room rent” is not charged, the less “equal and diverse” sets could technically abide by this rule (which would be of no value to the tenant) and still charge the full “percentage rent” and, if applicable, “clerks’ fees”. However, requiring sets not to charge any percentage rent or clerks’ fees on any fees received during a set period of parental leave could prove to be prohibitively expensive for some sets of chambers, especially in a time of significantly reduced overall income; it could be argued that this is not the time to be putting already vulnerable sets under further

financial pressure. Our own model is to give a “rent credit”, calculated as 9/12ths of the percentage rent contributions (we have no other rent charges) in the year prior to the start of parental leave, which is then offset against any rent due from fees received until the value of the credit is used up, however long that may take.

**BC EDC:** We agree with this proposal (and for 6 months) but want to raise the following:

- The requirement should include flat rate “rent and expenses” not just rent;
- “Rent and expenses” should be defined within the rules – perhaps simply by reference to such amounts as are paid on a flat rate basis immediately prior to parental leave;
- We could see a potential inconsistency in excluding payments such as loan and mortgage payments from the rule but including rent paid for example under a lease agreement. There is or may be little difference in principle here unless it can be said perhaps that the difference is an element of investment - and we think that further thought should be given to this aspect.
- We do not agree that the parental leave period should be rent and expenses free when they are calculated on a percentage basis. We recognise that where payments are on a percentage basis the period off work necessarily results in a lower rate of payments to chambers. If the rule encourages chambers to move to a percentage basis for the calculation of rent and expenses then this is a positive result. Such a basis is less likely to be discriminatory and more likely to be beneficial to those with caring responsibilities requiring flexible and reduced working hours.

**n) Do you agree with the proposed requirement that any member or pupil must have the right to return to her /his chambers as a tenant following a period of parental or adoption leave?**

**i. Do you agree that this right to return should continue for a period of at least a year?**

11 respondents explicitly answered this question in agreement. 3 stated that they thought a 6 month period would be better.

Comments

**Law Society:** There should also be some flexibility so that if the period of leave were likely to exceed 6 months, chambers would be allowed to have “short-term” tenants if it were necessary for business performance.

**EHRC:** The Commission strongly supports this proposal which it believes will go some way to tackling the well-documented gender imbalances in the profession. Without this right, barristers in this position may find it difficult to remain in practice. However, the Bar Standards Council should also consider whether it wishes to include this requirement for disabled members of the profession who have had time off as a result of their disability but are now returning to practice, and for those with other caring responsibilities. The Commission welcomes the proposal that the period in question should be at least one year. A shorter period may deter barristers with significant caring commitments from returning to the profession.

**Falcon Chambers:** If as it appears the question is aimed only at the period of absence from chambers which leads to a forfeiture of tenancy there seems to be little reason why this period should be limited to a year rather than say 3 years. This is an important issue for the retention of women at the Bar which the Neuberger report identified as a particular problem. Regarding pupils, return should be as a pupil (rather than as a tenant!) and should be subject to the availability of a pupil supervisor. It should be recognised that chambers have finite resources and are likely to have made or will make definite funded offers to other candidates for pupillage at the point in time when applications are received during the annual pupillage award.

**Chancery Bar Association:** Agree that members of chambers should have a right to return as a tenant after parental/ adoption leave. We do not consider that pupils should have a right to return to chambers as tenants following a period of parental leave unless an offer of tenancy has been made before going on parental leave. Pupils should be entitled to return to Chambers to complete their pupillage after a period of parental leave. Regarding pupillage there must also be continuity of training, steps need to be taken to ensure that the rules concerning pupillage incorporate clear policies on parental leave. Agree right to return should continue for at least a year but greater flexibility should be encouraged.

**AWB:** Any member must have the right to return to their position of tenancy in chambers following a period of parental or adoption leave, and likewise a pupil must have the same right to return as a pupil.

**18 Red Lion Court:** Pupils and tenants should have the right to return on the same basis that they left. In our view this period should also be for a period of six months.

**3 Raymond Buildings:** We do not think this should include 'pupil'. As far as we are aware, there are currently no guidelines with regard to parental or adoption leave for pupils or as to how this affects their obligation to complete a continuous period of pupillage.

**Monckton Chambers:** It is not clear how this proposed duty is supposed to interrelate with the period of parental leave. In principle, however, we agree that any member should have a right to return and that this should continue for at least a year. We do not agree what a *pupil* can have the right to return to chambers as a *tenant* in any circumstances.

**Doughty St:** There appears to be inappropriate conflation here of what might be expected for an employee and what is offered to by a set of chambers to a self-employed member. Whatever period of "parental leave" is offered by the set is the length of time that the place as a tenant is held open. We allow tenants to return to practice within three years, although there is always room for discretion in exceptional circumstances. It would seem curious, given most sets' thorough recruitment processes, to deem someone of suitable quality for a tenancy only to adjudge that quality to have diminished because of bearing or adopting then rearing a child.

- o) Do you agree with the proposed requirement that chambers must have written policies permitting members of chambers (male or female) to take career breaks and work flexible hours, or part time, or partly from home?**

Most respondents agreed with this rule although some were concerned that flexible working policies were more appropriate to an employed rather than self employed context.

Comments



**Middle Temple Hall:** Chambers should have a written policy permitting members of chambers to take career breaks but it is unnecessary for chambers to have a written policy permitting members to work flexible hours, or part time, or partly from home as the self-employed nature of the chambers system already allows for this without the need for compulsory provision.

**EHRC:** For the reasons given in response 10 k, the Commission strongly supports this proposal but believes it should be extended to disabled members of chambers and those with other caring responsibilities.

**Alistair Mitchell:** The nature of practice at the Bar is too variable to accommodate such policies.

**Marie Crawford:** I am disappointed that the s.9 of the guidance is not regulatory, chambers are unlikely to adopt measures that are voluntary, they should be mandatory. Personal situation is that I work 2 days per week after 1 year maternity leave, my chambers will not reduce my rent or let me pay a percentage so I pay the same as others who work full time. Cannot afford this and so will probably have to leave the Bar.

**20 Essex St:** Chambers must have discretion over length/terms of career breaks/part time working and flexible working.

**Anonymous Chambers :** Concerned that this rule may be interpreted as suggesting that chambers has any control over the working patterns of barristers comparable to employer/employee relations.

**LPMA:**

- Majority of bar are self employed so flexible working does not apply
- Need to be cautious so that part time working does not affect quality of services provided
- Chambers usually enjoy a collegiate atmosphere, if you introduce more rules you risk the “give and take” atmosphere. The less rules there are the more generous people are.

**CPS E&D UNIT:** Agree with these requirements however suggest that the requirement outlines that part-time work should mean part-time rent. More flexibility in how chambers operate will lead to a more diverse Bar.

**Falcon:** Agree with requirement for policy. Other circumstances such as a career break for medical treatment, caring responsibilities, bereavement should also be acknowledged and reflected by a rent free period. Any policy needs to be flexible in exceptional circumstances.

**Chancery Bar Association:** Agree with career break policy requirement although any right to return after a career break should be subject to retention of a practising certificate. There is no need for written policies on flexible working for the self-employed bar. In our experience, barristers regularly work flexible hours or from home. A written policy would be both unnecessary and undraftable. A written policy would tend to delimit rather than encourage flexibility.

**18 RLC:** We agree that Chambers should have written policies regarding career breaks. Whilst a policy on flexible hours or part-time work may appear reasonable, they may be largely meaningless in criminal chambers, where the work is largely advocacy based, and demand driven by court appearances. Whilst flexibility may be possible, it would be difficult to define this in terms of a written policy.

**2-3 Grays Inn Square:** There should be discretion within Chambers to set reasonable expectations on working patterns in the early years of practice. It is for individual, more senior members of Chambers to manage their own working arrangements provided they meet the financial requirements agreed internally by Chambers.

**Monckton Chambers:** Monckton Chambers is receptive to requests from members who wish to work part time, take sabbaticals, undertake study and research, explore alternative careers, write books, take leave on health grounds, *etc.* Requests are considered on an *ad hoc* basis and take into account a number of considerations, not least the strategy, financial health and commitments of Chambers at the time of the request.

- What does the BSB consider to be the scope of what chambers should offer by any such policy? It strikes us that for a policy to be viable (to fit with the chambers' strategy, to be affordable and to be capable of being put into practice, whenever it is sought to be invoked) it would need to allow for extensive discretion and be worded in so general a manner as to render it meaningless.
- The question appears to treat a set of chambers as if it were a public company or a government department; and fails to take account of the nature of a self-employed barrister's practice.

**Doughty St Chambers:** We do not feel that the BSB needs to or indeed should regulate on flexible working and that, there is the risk of conflating concepts of employment and self-employment. As self-employed practitioners, barristers in chambers already have the right to determine their working patterns (indeed, the HMRC might be concerned if they did not) and no prescription in this regard is necessary. Barristers should be free to discuss their working requirements individually with their clerks and with their chambers' management. It must also be accepted that certain aspects of flexible working can have a limiting affect on practising as an advocate in certain areas of law (for example, not being able to attend court on specific days); this will be specific to the individual practitioner and so does not lend itself to general prescription.

**p) Do you think that compliance with the any of the new regulatory requirements will place a financially onerous burden on chambers?**

Most respondents were unclear on this issue although a substantial number felt that the new requirements would place a financially onerous burden on chambers.

- i. **If so can you provide evidence of how the particular requirement might burden chambers financially and what revisions might be made to mitigate or remove such a burden?** Detailed in answers below

Comments

**PPC:** The provision of equality and diversity training and the provision of training in fair recruitment policies could place onerous obligations on small chambers and those engaged in publicly funded work. The proposals above for a minor dilution of the fair recruitment proposals would mitigate this problem while not undermining the aims of the regulations.

**TBC:** The proposed regulations will inevitably result in increased financial cost to chambers. The most obvious costs will be:

- The cost of attending regular training courses.
- Costs of increased administrative assistance required to comply with data collection and analysis obligations.

The training requirements proposed to be complied with by 2013 do not appear to be materially more onerous than the existing recommendations in the Equality and Diversity Code and ought not therefore to lead to additional cost.

The extended requirement that from 2014 every member of chambers' selections panels should have undertaken training is likely to impose additional training costs that cannot be dismissed as insignificant but this Committee takes the view that the costs burden is necessary and proportionate in order to achieve the benefit of fair access to the profession.

Costs of training courses could be mitigated by the approval by the BSB of shorter 'top-up' courses that could be completed by individuals who have undergone an approved training course in the past.

The increased administrative costs associated with data collection and analyses are potentially significant. These could be mitigated by:

- provision by the BSB of an approved, user-friendly form or other data recording mechanism and clear information and guidance to assist in ensuring compliant data analysis;
- approval by the BSB of existing forms of data collection already carried out as part of procedures already in place (such as equality and diversity data already collected via pupillage portal applications, etc);
- requiring data collection and/or analysis on a less frequent basis in the case of existing tenants (ie requiring submission of data other than pupillage/tenant entry data every three years instead of annually and requiring work allocation reviews for tenants to be carried out twice a year instead of every quarter).

**Law Society:** In our view, these new regulatory requirements will not place a financially onerous burden on chambers. However, this is provided that the BSB do not prescriptively mandate training on equality and diversity but provide support and guidance for chambers who want to go beyond compliance and develop best practice in equality and diversity.

**Middle Temple Hall:** The requirements specified at (e) and (f) above will place a financially onerous burden on chambers, especially chambers of a smaller size or those in less lucrative areas like

crime/family/immigration which tend, in any event, to have more BME and female members. It will cost money to attend training courses and time will be taken out from the working day when money can be earned. In order to mitigate such a burden, the courses should be provided for free and should be available in the evenings and weekends, and should be voluntary

**Stuart Pryke:** With so much of our lives now being regulated only large organisations can deal with this level of regulation, as a sole practitioner this is burdensome. Further regulation in this area marginalises small business operators who can't afford to do all that is expected.

**20 Essex St:** Compliance with these regulations will place be burdensome financially especially for chambers who have not made an allowance for it. Monitoring of work allocation and training requirements are also onerous financially.

- Training likely to cost £100 per head.
- Currently monitoring work allocation at 20 Essex St takes more than a day's work for senior clerk looking at much less than is required by these proposals.

**Ann Buxton Hardwicke Ch:** Implementation of these proposals will cost time of senior staff and divert barristers from billing. One of the Bar's competitive advantages is that it is lean/cost effective business model. The more reporting/analysing/monitoring requirements the less time spent on core service work so cost advantage is eroded. Senior staff already work punishing hours – chambers will need more staff or may have to spend less time generating work for barristers.

**Sarah Hornblower:** There will be a burden. A complete rent break even for small chambers would impose a burden as would drafting all the polices that are required. This would lead to a drop for barrister responsible for doing this work.

**Thomas Dillon:** Compliance costs – in training, staff- and Barrister-time lost from productive activity and increased practising certificate fees as a result of an enlarged control function from the BSB. The requirement to pay the rent of tenants who are exploiting the new rights of absence is a further expense on continuing members of Chambers.

**Bar Disability Group:** There may be financial implications, but they would hardly be "onerous". Far more "onerous" financial implications will follow from the Government's attack on Legal Aid.

**Falcon:** The main burden will be the financing of parental leave. Also some minor administrative costs associated with monitoring applications and allocation of work, but this should be being done already.

**Chancery Bar Association:** Potential financial impact on small chambers and those who rely on publically funded work.

**AWB:** A financially onerous burden is an inevitable consequence of these proposed rule changes the BSB must do its utmost to ensure that associated costs of compliance are mitigated. We have noted where we believe additional costs may arise and suggested how those costs might be mitigated or removed, e.g. free accredited courses for equality and diversity training provided by the BSB.

**Matrix:** The proposed requirements will inevitably lead to some increased burden but we consider that this should be proportionate and that the benefits that will flow for the profession and the wider public outweigh that burden. Any impact on smaller sets could be mitigated if BSB organized the relevant training itself.

**3 Raymond Buildings:** The training requirements have the biggest potential impact. External training would naturally involve a cost to chambers, first because of the cost of the course itself, and secondly though lost income for Barristers undertaking it, ultimately resulting in less rental income for chambers (our rent is based entirely on a percentage of receipts). The impact would be lessened if those with lead responsibility for recruitment were obliged to undertake a fairly comprehensive external training course, but then allowed to 'cascade' the main points internally.

**Monckton Chambers:** The additional requirements will clearly have a significant effect on resources, although it is difficult at this stage to produce evidence of the extent and cost involved. We anticipate that both system and staff resources will be needed. It might be necessary to invest in more sophisticated IT systems and develop new processes. The onerous requirements will certainly require additional inputting, analysis and reporting work.

We are able to confirm that the work, which will not generate any additional revenue for Chambers, will not justify the recruitment of additional staff; existing staff (and members) will see their workload increase.

The revisions which we consider might be made to reduce or remove such a burden is the introduction by the BSB of online systems, similar to the Pupillage Portal, producing the required analysis which can be used by Chambers to process mini-pupillage and tenancy applications data as well as unnamed work allocation.

**Doughty St Chambers:** Areas of potential financial and administrative burden are identified in the answers given above. In the current environment, the justification for placing additional financial burdens on any chambers should be examined most carefully.

**EHRC:** Although the Commission both employs barristers and provides briefs to counsel, it is not in a position to advise on the short-term commercial implications of the equality and conduct and practising rules. However, the Commission has often made it clear that it is in the long term interests of the nation, and of business generally, if it becomes better at attracting and retaining a diverse workforce. There is evidence from a number of business sectors that equality improves performance, innovation and competitiveness e.g. in 2007, McKinsey found that those European companies with the highest level of gender diversity in top positions outperformed their sector in respect of investment returns.

**q) Do you think that the guidance is useful in understanding what is required by the new regulatory rules?**

Most respondents felt that the guidance was useful. However the comments below set out some areas where the guidance could be expanded:

Comments

**TBC:** Broadly, the Committee considers the proposed guidance useful. However:-

- a. There is a need to define in due course what training will be considered “appropriate”.
- b. There is a need to define in due course how frequently training is required to be undertaken to in order to qualify as “recent”.

Either the rules or the guidance (preferably the former) should specify exactly what data as to race and gender is required to be collected, how it is to be analysed and what will be considered to be compliant in terms of investigation and remedial steps should data analysis identify concerning trends

**Bar Liaison Committee:** Need to produce guidance on sanctions that will be imposed for breach of these rules.

**Bar Council EDA:** Guidance does not cover Parental Leave provision for secondary carers. Current E&D code for the Bar guidance states: *“The Bar Council recommends that members of chambers should be offered a minimum of one month’s leave free of Chambers rent and expenses following the birth or adoption of a child by their partner, where they share responsibility for that child so that they can discharge that responsibility”*.

**Inner Temple:** More guidance is needed for potential providers of training in order to assess its likely impact on time and resources.

**AWB:** It is longer than necessary. As regards the training requirements the guidance should include explanation of the meaning of “every member of all selection panels....” to deal with the situation where, at the last minute another member of Chambers must be substituted unavoidably (perhaps due to delayed return to Chambers of the original panel member) but in order to ensure that the interviews may go ahead.

**EHRC:** The Commission thinks that the guidance is helpful. The sections on harassment could more fully reflect statutory definition and full wording in the Equality Act 2010. In respect of monitoring, the Commission intends to publish more on monitoring around the new characteristics and the Bar Standards Board may wish to take any new material into account as it develops this guidance over time.

The Commission also thinks that the positive action provisions, including those in relation to recruitment and promotion should be referred to in detail in the guidance. Currently, only the general provisions are referred to and not positive action in respect of recruitment and promotion.

The Bar Standards Council should consider publishing more detailed guidance about making reasonable adjustments in chambers and in the provision of legal services.

- r) Are there any areas not covered by the regulatory requirements and/or guidance which you think need to be covered?**

Comments



- Race/gender stats should be supplemented by data on socio-economic status. Necessary given the numbers of people from underprivileged backgrounds leaving the criminal and family bar.
- Core duty:
  - Do not consider it necessary to have written plan implementing E&D policy. It is implicit that if chambers has a policy it will implement it. Requirement for a plan will incur further admin/consultant costs with little benefit
  - Better to require chambers to review (in writing) policy and its implementation on annual basis highlighting what has been implemented and steps for better implementation.
- A Sickness Absence Policy for Pupils, who should not feel pressured to work every day, even if genuinely unfit to work.
- The role of the required Equality & Diversity Officer could be explained more in relation to the other requirements.
- Fair Access to Work practising rules do not require Chambers to have a policy and process for complaints of discrimination (this would not always fall under the anti-harassment policy).
- The Anti-Harassment Policy is referred to but does not state that harassment undertaken by members will be seen as a breach of the E&D provisions of the code of conduct.
- Third party harassment provisions (harassment by a 3<sup>rd</sup> party e.g. a client) is not covered in detail.
- Monitoring for compliance – this process needs to be clarified as the guidelines mainly read as though action will only be taken when a breach is reported. Our experience with the CPS Equality & Diversity Expectations Statement was that a monitoring process, even for a non-mandatory statement, was a vital process of assurance.
- Should be guidance on “work experience” placements which are not mini pupillages. Parents with contacts at the Bar can pull strings to get their children work experience which gives them a benefit in terms of becoming familiar with the environment. Guidance might emphasise the good that can

be done by targeting work experience placements at those who are unlikely to have existing contacts. It might also encourage barristers to recognise that offering work experience placements to those who already have contacts at the Bar tends to reinforce existing social patterns. We believe that it is imperative that clerks and their equivalents must be governed by the regulatory requirements and (bearing in mind the forthcoming changes to regulation of differing legal entities) any entities regulated by the BSB.

- The time has now come for the BSB to require all members of the Bar to undertake one hour per year of accredited equality and diversity training as part of their 12-hour CPD requirements. Such a requirement would underscore the importance of applying equality and diversity principles throughout a barrister's practice. It would ensure also that barristers are sufficiently educated about the relevant considerations if, for example, they stand in at the last minute to replace a colleague on a selection panel for pupillage or they are asked to read pupillage and mini-pupillage application forms.
- Neuberger Report recommendations should be implemented in full.
- Monitor socio-economic background and create further rules to combat socio-economic discrimination at the Bar.
  - Recruitment decisions often appear to be influenced by class and/or education. Privately educated applicants for pupillage or tenancy are preferred to those who attended a grammar or, worse, state school. Red-brick universities are deemed superior to newer ones.
  - Many Chambers appear to discriminate – directly or indirectly – against those from a lower socio-economic background, leading the public to regard the Bar as an elitist profession, selecting the rich and well-connected in preference to poorer applicants.
- The BSB should itself produce model policies that are compliant with the Code of Conduct and relevant legislation that Chambers can adopt or adapt as required.
- As recommended in the Neuberger Report some equality and diversity training should be made compulsory for all barristers as part of their CPD requirements. In addition, we think such training should be made compulsory for clerks given their pivotal role in work allocation and career

development within chambers. We propose that this should be achieved through a requirement on Heads of Chambers to ensure chambers' clerks receive appropriate (as defined by the BSB) training.

- The Equality Act is sufficient and there should be no expansion of the CoC on these matters. The CoC is far too big and should be reduced. There should be no paperwork burden on individual barristers and chambers, this should be left to the Inns. The BSB should confine its work to maintaining CPD.
- With so much of our lives now being regulated only large organisations can deal with this level of regulation, as a sole practitioner this is burdensome. Further regulation in this area marginalises small business operators who can't afford to do all that is expected.
- More consideration needs to be given to people from different socio-economic backgrounds and educational backgrounds (i.e. individuals who are the first in their family to go to university/the Bar), but in general we (Middle Temple) advocate less regulation and less interference with the profession by the regulators.
- Chambers are required to appoint at least one EDO but there is no mention of training requirements for this person in these new proposals.