

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Consultation on the Proposed Amendments to the Equality Rules

September 2024

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[About this consultation](#)

This paper invites views on our proposals for amendments to Core Duty 8 and our proposed new Equality Rules, which will replace the [current Equality Rules \(rC110-112\)](#). The Bar Standards Board welcomes written responses to this paper by 5PM on 29th November 2024.

Our proposal: a summary

Background

1. The Bar should be a profession open to people from any background who have the aptitude, with equal opportunities to progress for everyone. An inclusive profession also brings benefits to consumers. Encouraging a diverse legal profession is a key Regulatory Objective for legal regulators under the Legal Services Act 2007, and we also have obligations under the Equality Act including the Public Sector Equality Duty.
2. In considering the impact of our existing equality rules, we have identified a number of key challenges:
 - a. Unequal outcomes in recruitment, work distribution and progression.
 - b. Inconsistency in making reasonable adjustments and offering flexible working.
 - c. Reports of bullying, harassment, and victimisation.
 - d. Failure to create an inclusive culture.
3. We therefore propose to:
 - a. Amend our Core Duty, to ensure that all barristers have a duty to promote equality, diversity and inclusion when practising or otherwise providing legal services;
 - b. Set clear outcomes in our Equality Rules that we expect the Bar to take reasonable steps to meet;
 - c. Specify detailed requirements of the self-employed Bar and entities, in order to support a framework of transparency and accountability in making progress towards those outcomes

Individual responsibility: amending the Core Duty and associated Handbook provisions

4. We propose to replace the current Core Duty 8 (You must not discriminate unlawfully against any person) with a new duty: You must act in a way that advances equality, diversity and inclusion, which expands on the current Core Duty not to discriminate unlawfully. This will apply to all barristers when practising or otherwise providing legal services. We also propose to amend outcome oC8 to reflect the new breadth of the duty, and to remove the current rule rC12 which states that “you must not discriminate unlawfully against, victimise or harass...” (as this restates what is already required by law and in any case the Equality Rules specify that barristers must not discriminate, harass, bully, or victimise.)

Equality Rules

5. In addition to the Core Duty, we believe it is necessary to continue to set requirements for self-employed barristers and entities. These general equality rules will focus on the outcomes that we need to achieve in the profession. Barristers will be expected to take reasonable steps to promote the following outcomes:
 - a. eliminate unlawful discrimination and advance equality of opportunity, particularly in relation to recruitment, retention, and progression.
 - b. prevent bullying, harassment, and victimisation, and have systems in place to respond to such behaviour;
 - c. ensure equal access to their services; and
 - d. promote an inclusive culture.
6. In addition, we propose specific requirements for chambers¹, entities and (in some cases) sole practitioners. We propose to require barristers to have the following mandatory policies that govern their practice and enable appropriate grievances to be raised:
 - a. Equality, diversity and inclusion policy
 - b. Anti-harassment and bullying policy
 - c. Reasonable adjustment policy
 - d. Flexible working policy
 - e. Parental leave policy
 - f. Allocation of unassigned work policy

¹ Annex C – Glossary of Terms

7. Subject to GDPR requirements, we also propose to expand our requirements on equality monitoring and publication to ensure transparency and accountability as to how well barristers in self-employed practice and entities are meeting the equality outcomes. We propose that the profession takes reasonable steps to annually collect, analyse and publish equality monitoring data² disaggregated by protected characteristics³ and socio-economic⁴ background (and make this available to the BSB on request) in a number of areas (See paragraphs 47-51).
8. We propose that there should be a written ‘action plan’ that is specific and measurable to address any disparities identified through analysing the data. (See paragraph 53).
9. On training, we propose to replace the currently mandated “fair recruitment training” with a broader requirement to undertake appropriate training in order to meet the equality outcomes. This would require barristers to consider the roles they undertake with chambers, such as sitting on recruitment panels, and to undertake training where necessary in order to meet the equality outcomes. The BSB may set minimum requirements for training for the profession (or individual barristers following supervision activity or other regulatory intervention). (See paragraphs 54-56).
10. In order to promote disability access, we propose that barristers in self-employed practice and entities should conduct and publish an accessibility audit in relation to disability, reviewed every five years, with an associated accessibility plan and associated information on websites (See paragraphs 57-59).
11. We may also expect the profession to take reasonable steps to ensure that premises are fully accessible to all. (See paragraphs 60-62).
12. We propose that the BSB should no longer mandate the appointment of Equality and Diversity, and Diversity Data Officers (EDO and DDO roles) (See paragraphs 63-64). Our proposed new rules are set out in Annex A. Our rationale for the proposed equality outcomes is discussed at Annex B. And a glossary of terms is provided at Annex C.

Implementation and evaluation

13. We recognise that the profession will need time to adapt to the changes that we propose. It will also be necessary for other organisations, such as the Bar Council and others, to prepare to support the profession in implementing these new rules. We therefore expect that we will give a period of time to enable the profession to implement those new rules that require changes to how practices

² Subject to data protection laws and regulations.

³ Annex C – Glossary of Terms

⁴ Annex C – Glossary of Terms

are managed. This is likely to be around a year. Following this initial period, our focus for the practice management requirements would be on supporting the profession through supervision before taking any enforcement action. Therefore, we will use a range of tools, including communications, supervision and enforcement to support implementation.

14. We will judge our success by whether we have met the outcomes that we set for ourselves and the profession. We expect to do this by tracking a combination of the following indicators:
- Demographic change in the profession, both overall and by level of seniority, area of practice etc.
 - Reported experience of bullying, discrimination and harassment by members of the profession, with feedback on the overall inclusiveness of the culture at the Bar and how that affects retention, progress and wellbeing.
 - Recruitment trends and identified barriers.
 - Consumers' experiences of the profession

Responding to the consultation

15. We invite written responses by 5PM on 29 November 2024. You do not need to wait until the deadline to respond to this consultation. Please use the form provided to submit your response to: equality@BarStandardsBoard.org.uk.

Background

Why does this matter?

16. The BSB regulates in the public interest. In performing our regulatory functions, we promote the regulatory objectives of the Legal Services Act 2007. Equality, diversity and inclusion are central to this mission. The Bar should be a profession open to people from any background who have the requisite aptitude. Within the profession, there should be equal opportunities to progress for everyone.
17. An inclusive profession also brings benefits to consumers. A more equitable Bar may provide consumers with more confidence in a profession that better reflects the society it serves. 'Equality' is therefore a key theme of the [BSB Strategy 2022-2025](#). We believe the key challenges are both structural and cultural. Whilst we see a strong commitment to equality, diversity and inclusion across much of the Bar, people also tell us about challenges that result from the lack of formal structures associated with the nature of self-employed practice.
18. The current Equality Rules were introduced in 2014 to ensure we meet our regulatory objectives under the Legal Services Act 2007 and our obligations under the Equality Act 2010. Whilst the Equality Rules contribute to the promotion of all our regulatory objectives, they are particularly targeted at our obligations to encourage an independent, strong, diverse and effective legal profession, and to improve access to justice. For us to promote these objectives we must ensure that the profession is truly representative of those it serves and that the working culture at the Bar enables people from all backgrounds to thrive. As a public body for the purposes of the [Equality Act 2010](#), we also have obligations under the [Public Sector Equality Duty](#) to have due regard to the duty in how we exercise our regulatory functions, including the rules and requirements we place on the profession. to have due regard to the duty in how we exercise our regulatory functions, including the rules and requirements we place on the profession.
19. In order to understand how effective the current equality rules are at tackling inequalities within the profession and enabling us to meet our legal obligations, we have considered the effectiveness of our current rules through engagement activities with stakeholders e.g. the profession, the Inns of Court, the BSB's Race Equality, Disability, and Religion and Belief Task Forces, as well as through research and data on the current inequalities within the profession and the extent to which the current rules have had an impact.
20. We have found that inequalities persist within the Bar. There continue to be barriers to entry, retention and progression for those who share certain

protected characteristics and those who are from certain socio-economic backgrounds. Whilst there has been an increase in the proportion of female barristers, barristers from minoritised ethnic backgrounds, and barristers with a disability, these groups remain underrepresented at senior levels of the Bar⁵.

21. Our research into pay at the Bar⁶ shows that female barristers are likely to earn less than male barristers and that those who are from minoritised ethnic backgrounds are likely to earn less than White barristers. We have also found that criminal, family, and immigration law have the highest proportion of pupillage recruitment from those who attended state schools, whereas areas of practice that may attract higher fees, such as commercial law and personal injury law, have the highest proportion of pupils who attended fee-paying schools⁷. Similar patterns can be seen in relation to ethnic background. In addition to these inequalities, surveys repeatedly show that bullying and harassment remain prevalent, indicating the need for cultural change at the Bar⁸ ⁹. We therefore very much welcome the review into bullying and harassment at the Bar that the Bar Council has recently established, chaired by Harriet Harman KC.

22. Four key themes underline the challenges we have identified within the profession, which have had a disproportionate impact on those who share certain protected characteristics and certain socio-economic backgrounds;

- Unequal outcomes in recruitment, work distribution and progression.
- Inconsistency in making reasonable adjustments and offering flexible working.
- Reports of bullying, harassment, and victimisation.
- Failure to create an inclusive culture.

Our approach to regulation in this area

23. The BSB [Handbook](#) consists of outcomes, high level principles (Core Duties) and more detailed rules. The current outcomes are not enforceable and are

⁵ Bar Standard Board (BSB), Diversity at the Bar Report (2023), available at <https://www.barstandardsboard.org.uk/resources/bsb-publishes-its-annual-report-on-diversity-at-the-bar.html>

⁶ Bar Standards Board (BSB), Income at the Bar – Gender and Ethnicity Research (2020), available at <https://www.barstandardsboard.org.uk/static/1ee64764-cd34-4817-80174ca6304f1ac0/Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf>

⁷ Bar Standards Board (BSB), Pupillage Recruitment Research (2024), available at <https://www.barstandardsboard.org.uk/resources/resource-library/bar-standards-board-publishes-two-reports-on-pupillage-recruitment-at-the-bar.html>

⁸ Bar Council, Barristers Working Lives Survey (2021), available at <https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

⁹ Bar Council, Bullying, Harassment, and Discrimination at the Bar (2023), data from Barristers' Working Lives Survey (2023) and Talk to Spot reports (2019-2023), available at <https://www.barcouncil.org.uk/static/5a630b6a-8e91-473f-bfa0cca11b707e42/Bullying-harassment-and-discrimination-at-the-Bar-December-2023.pdf>

intended to aid with interpretation of the Core Duties and rules. In the current version of the Handbook, the key Core Duty states that barristers must not discriminate unlawfully against anyone. This is supplemented by more detailed requirements that apply to barristers in chambers and entities. These ensure that there are systems and processes in place to support the promotion of equality and diversity.

24. As we review our Handbook, we aim to be more principles-based in our use of rules, and more focused on the outcomes that we want to achieve. Our key driver of behaviour and culture should be the Core Duty. As such, we propose to broaden Core Duty 8 to include a positive duty to promote equality, diversity, and inclusion. This would apply to all barristers while practising or otherwise providing legal services. It will be supported by our proposed new Equality Rules, which will be more focused on achieving specific Equality Outcomes, and more detailed requirements that would apply to the self-employed Bar and entities, in order to provide a framework for transparency and accountability in the delivery of the outcomes. For the first time, we will be putting the achievement of specific outcomes at the heart of the rules, with an expectation that barristers take reasonable steps to meet them. We believe that there must be a duty on all barristers when acting in their professional roles and, in particular, as members of chambers or entities, to act in a way that promotes equality, diversity and inclusion.
25. The BSB primarily regulates individual barristers, the majority of whom are in self-employed practice. Most self-employed barristers practise in chambers, and the BSB sets requirements for those individual barristers in relation to how their chambers should be managed. This is because of the important role that chambers play in managing the practice of their members. We believe it is essential that we work in collaboration with chambers to achieve the outcomes that we expect. Where we refer to requirements on chambers in this document, they are regulatory requirements that will be placed on the individual barristers within chambers. Some self-employed barristers are sole practitioners and do not practise within a chambers. We have set out how the new rules might apply to sole practitioners and we welcome views on how we can ensure that we take a proportionate approach.
26. Employed barristers may work in firms that are regulated by another regulator, or in other organisations in the public or private sector. In general, the employed Bar is more diverse than the self-employed Bar and is not necessarily subject to the same cultural and structural challenges as the self-employed profession. We do not set detailed practising requirements for the employed Bar in relation to equality, diversity and inclusion, but the relevant Core Duty will apply to the practice of employed barristers. We welcome the views of the employed Bar on this approach. The BSB also regulates entities, to whom the rules discussed in this document will apply directly and we are also keen to hear from entities about how these rules will apply to them.

'Equality, Diversity, and Inclusion' – What do we mean?

27. 'Equality, diversity, and inclusion' is a principle that serves as the foundation for a set of values and behaviours that form our proposed Core Duty 8 and the Equality Rules. Whilst this principle is more than the sum of its parts, the following defines each constituent part of this principle and then goes on to illustrate how we envisage the operation of this principle for the Bar.

- Equality – by this we mean equality of opportunity. This includes equality of opportunity in recruitment, retention, and progression within the Bar. It also includes addressing any barriers in access to services, eg. how the profession engages with clients from minoritised ethnic backgrounds, disability access, etc.
- Diversity – by this we mean ensuring that the profession is reflective of the population it serves including, but not limited to, characteristics covered by the Equality Act and socio-economic background. It also means ensuring the profession is able to serve diverse clients.
- Inclusion – this refers to creating a respectful environment and culture where people feel valued and are able to participate and reach their full potential.

28. Compliance with the proposed Core Duty and Equality Rules is not necessarily to have achieved equality of outcome, but to have taken reasonable steps and to have demonstrated progress over time.

29. The rules we have proposed are therefore significantly more outcomes-focused, with prescriptive requirements where we believe this is necessary for transparency and accountability. Our proposed new rules would require chambers and entities to take a reflective approach in meeting the outcomes of the equality rules. We believe this approach to our rules would enable cultural change rather than simply a 'box ticking' exercise.

30. We recognise that it will be helpful to provide the profession with guidance for complying with these rules. But we also recognise that we cannot achieve these outcomes through regulation alone. A change in culture requires the support and active collaboration of the profession. The Bar Council, as the representative body, has an important role to play in supporting the profession to comply with its regulatory duties and we welcome the essential work that the Bar Council does in this area. We also want to work with others such as the Inns of Court, the circuits and specialist Bar associations, the Legal Practice Management Association and the Institute of Barristers' Clerks. Only by working together will we achieve the desired outcomes.

Individual responsibility: amending the Core Duty and associated Handbook provisions

31. We propose that the Core Duty be amended to make it a proactive duty to ‘act in a way that advances equality, diversity, and inclusion’. It is important that every barrister sees this as a duty that applies to them in their professional role, and that the BSB is able to take action against behaviour which works against equality, diversity and inclusion. The current Core Duty requires barristers not to ‘discriminate unlawfully’. However, in order to achieve the culture change needed, we believe the duty needs to go further. We believe it should be a core expectation of all practising barristers that they demonstrate an appropriate commitment, through their practice, to equality, diversity and inclusion. This will form the basis of our future regulatory action in this area and will be central to achieving behaviour and culture change across the profession. This approach is consistent with the [Professional Statement](#), which details the knowledge, skills and attributes that barristers must demonstrate in order to practise. The statement includes the following:

“Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.

They will understand the law on equality and the need to value differences between members of society and apply that understanding in the workplace through taking positive steps to confront and tackle discrimination, whether in themselves, in others or in the structures of that workplace.

Barristers should:

- a) Actively observe and uphold the law on equality, diversity and discrimination.
- b) Be alert to the potential for unconscious bias.
- c) Take active steps to act fairly and inclusively and show respect to others.
- d) Identify situations where there is a risk of breach of the law on equality and diversity.
- e) Promote diversity in the workplace and where appropriate challenge others if their behaviour does not comply with the spirit of the law relating to equality, diversity and discrimination.”

32. As is the case now, the new Core Duty will apply to barristers when practising or otherwise providing legal services¹⁰. Core Duty 8 is not intended to apply to a barrister’s conduct in non-professional life but other Core Duties and [guidance](#) such as Core Duty 5 will continue to apply. We welcome views on whether this is the correct approach, as we recognise there may be situations where behaviour (such as harassment) is not clearly within a barrister’s practice but nevertheless is problematic.

¹⁰ BSB Handbook, rC2.1

33. We are aware that the implementation of this duty may apply differently to employed and self-employed barristers. For example, barristers in self-employed practice and entities can look to the new Equality Rules for support in meeting this duty. We will develop guidance on how the Core Duty applies to both self-employed and employed barristers, and to entities.
34. Upon amendment of CD8, linked Handbook entries in Part 2- C ('The Conduct Rules') will also be amended or removed to reflect this change.
- a. oC8 provides outcomes for the core duty CD8 and therefore should reflect the new breadth of the duty.
 - b. rC12 which states that "you must not discriminate unlawfully against, victimise or harass..." is more limited than the proposed new Core Duty, and so serves no useful purpose as a rule. However, we will make clear in guidance that the new Core Duty is an expansion of the current duty, and therefore barristers may not unlawfully discriminate, harass, or victimise.

Recommendation 1

We propose to replace the current CD8 with the following duty:

CD8 You must act in a way that advances equality, diversity and inclusion.

And to amend the Ethical outcome oC8 to reflect the positive duty:

oC8 Those regulated by the Bar Standards Board act in a way that advances equality, diversity and inclusion, and take steps to prevent unlawful discrimination and other unlawful conduct in their practice. This includes taking reasonable steps to ensure equality of opportunity for everyone regardless of their protected characteristics and socio-economic status.

It is proposed to remove rC12 entirely.

Consultation questions

1. *Do you agree with the new positive Core Duty (CD8) (and consequential amendments), which goes beyond the duty not to discriminate unlawfully?*
 2. *Are there examples of conduct, both within and outside of a barrister's practice, that should be prohibited but are not captured by this duty?*
 3. *Is our approach to the proposed Core Duty appropriate for those at the Employed Bar?*
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Equality Rules

General Equality Rules - Focusing on Outcomes

- 36 In addition to the Core Duty, we believe it is necessary to continue to set requirements for self-employed barristers and entities. These rules will apply to individual barristers to ensure compliance through their practice, and to entities. For individual barristers, the way in which they apply may vary depending on whether they are a sole practitioner or practising in a chambers. To focus more on achieving culture and behaviour change in the profession, we propose to take a more outcomes-focused approach to the new Equality Rules. This is based on the changes in culture and processes we wish to see within the profession.
- 37 These rules set minimum standards and requirements that must be met by all self-employed barristers and entities regardless of size. We recognise that approaches to meeting the standards may differ depending on the nature of practice. As such, we would expect each barrister to reflect on what is needed in order for them to meet the rules in their own practice. We are keen to work with other bodies within the profession that are better placed to provide direct support, in developing guidance and training.
- 38 Our new approach first sets out “outcomes” which all self-employed barristers and entities must take reasonable steps to meet. These are set out below. Our rationale for the proposed equality outcomes is discussed in more detail at Annex B.

Recommendation 2

We recommend that the BSB adopt the following outcomes-based Equality Rules:

‘General Equality Rules’

Barristers in self-employed practice and BSB entities¹¹ must take reasonable steps to meet the following equality outcomes for those who share particular protected characteristics and/ or socio-economic background:

- a) eliminate unlawful discrimination and advance equality of opportunity, particularly in relation to recruitment, retention, and progression.
- b) prevent bullying, harassment, and victimisation, and have systems in place to respond to such behaviour;
- c) ensure equal access to your services; and
- d) promote an inclusive culture.

¹¹ Annex C – Glossary of Terms

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4. Do you agree that the Equality Rules should take an outcomes-based approach, supported by prescriptive requirements that enable barristers to meet the outcomes?
 5. Have we identified the correct priority areas (recruitment, retention, and progression)?
 6. Are there any further outcomes we should seek to achieve through the Equality Rules?
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39 As a result of this outcomes-focused approach, it is our view that some of the more specific requirements of our existing rules are now addressed under these broader outcomes: We therefore will not replicate these in the new rules. These are; rC110.d on the application of fair and objective criteria in recruitment and selection processes and rC110.i on fair access to work.

40 Annex A discusses each outcomes-based rule and our evidence and reasoning for adopting these outcomes. It also cross-refers to our recommendations for prescriptive requirements as set out below.

‘Specific Requirements’ for self-employed barristers and entities

41. Whilst we are taking an outcomes-focused approach to the rules, we believe certain prescriptive requirements are necessary to support the profession to meet these outcomes, and to demonstrate how they meet the outcomes. The ‘Specific Requirements’ component of the Equality Rules sets out a framework for transparency and accountability to support this. This will help self-employed barristers and entities to take a reflective approach, and create the transparency required to hold them to account in the promotion of equality, diversity and inclusion.

42. Our specific requirements for self-employed barristers and entities include:

- a. Policies;
- b. Equalities Monitoring: data collection and analysis;
- c. Action plans;
- d. Training; and
- e. Disability access and access to premises.

43. These requirements would apply to all self-employed barristers as a means of meeting the ‘General Equality Rules’ and to demonstrate progress on achieving the equality outcomes of the ‘General Equality Rules’. However, we want to be mindful of the possible administrative burdens on smaller chambers and sole practitioners and will consider what support may be made available.

44. In particular, we are consulting on whether new requirements should be placed on sole practitioners under the proposed new rules, but we want to be mindful of proportionality in seeking to meet the outcomes of the general rules. We recognise that some of the specific requirements may not be relevant or proportionate for sole practitioners. In relation to policies, we propose that sole practitioners have relevant policies in place where relevant to the nature of their practice. Although sole practitioners provide legal services by themselves, they may employ others to support their practice. Therefore, it may be necessary, in order to meet the equality outcomes of the 'General Equality Rules', to have in place an equality, diversity, and inclusion policy, but the requirement to have a work allocation policy will not be applicable. In relation to equality monitoring, sole practitioners would be required to collect and analyse (where appropriate) types of complaints from clients disaggregated by protected characteristics in order to reflect on and meet 'Outcome C' of the 'General Equality Rules'. Sole practitioners would also be required to take steps to ensure access for disabled clients and employees, where relevant and proportionate. We welcome views on our approach to the application of the equality rules for sole practitioners.

Policies

45. Our current Equality Rules require that chambers and entities have in place policies a. – e. in Recommendation 3. We would maintain these requirements, with the addition of a requirement to have a policy on 'Allocation of unassigned work'. These policies should clearly set out what members of the workforce¹² and/or clients can expect.
46. We shall neither prescribe what should be included in these policies, nor provide model policies, as we have heard that this can result in a 'box ticking' exercise. We believe it is important for the profession to reflect on what is right for their practice, to meet the equality outcomes. However, we want to work with stakeholders to ensure there is clear guidance and support for developing these policies. There is an important role for the Bar Council and others here. As noted above, we welcome views on the extent to which these policies might apply to sole practitioners.

Recommendation 3

We propose to require barristers to have the following mandatory policies that govern their practice and enable appropriate grievances to be raised:

- a. Equality, diversity and inclusion policy
- b. Anti-harassment and bullying policy
- c. Reasonable adjustment policy
- d. Flexible working policy
- e. Parental leave policy

¹² Annex C – Glossary of Terms

f. Allocation of unassigned work policy

Recommendation 4

We propose that the BSB should no longer prescribe the content of policies and would instead provide guidance on the development of appropriate policies linked to action plans.

Consultation questions

7. *Regarding policies:*

- a) do you agree with the list of required policies in Recommendation 3;*
 - b) do you agree that a non-prescriptive approach to the required policies will result in a more reflective and meaningful approach?*
 - c) how can we ensure that this approach is appropriately targeted to the needs of different practices?*
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Equalities Monitoring: Data Collection and analysis

47. Achieving the outcomes stated above requires an evidence-led approach. It is important that we monitor against equality outcomes across all protected characteristics. We recognise that there are other characteristics, not explicitly covered by the Equality Act 2010, that may affect an underrepresented individual's ability to access and progress in the profession. These characteristics may include (but are not limited to) socio-economic background and neurodiversity. Our research shows that a person's socio-economic background can impact their ability to access the Bar and may affect their career progression once at the Bar. This is often compounded where socio-economic background intersects with other protected characteristics.¹³ We therefore propose to require chambers to collect and analyse data on socio-economic background. Through this consultation, we are seeking views on whether there should be a requirement to monitor and analyse data on other characteristics.

48. Currently, the BSB publishes aggregated data for the profession, collected from individual barristers. At a chambers/entity level, there is a requirement to

¹³ Bullying, Discrimination, & Harassment at the Bar, <https://www.barstandardsboard.org.uk/static/896b55e0-72b2-4388-be291617735b8a25/ea23e7ad-cc4a-438f-b50d6929f2001c5d/October-2020-BDH-at-the-Bar-full-report.pdf>, p.20

invite the workforce to provide ‘diversity data’¹⁴ using a model questionnaire¹⁵. Anonymised data are required to be summarised and published on a chambers/entity website every three years¹⁶.

49. We believe that the current guidance document for chambers on complying with the Equality Rules defines the requirement for data collection and publication too narrowly. Whilst the existing rules require the collection and analysis of equalities monitoring data in relation to work allocation and recruitment, the supporting guidance only requires chambers to collect, analyse, and publish data on level of seniority disaggregated by certain protected characteristics. We believe that these requirements are too narrow in scope and have led to a lack of transparency in areas such as work distribution. The Bar Council’s ‘Race at the Bar’ report¹⁷ makes strong recommendations on the importance of collecting and analysing equality monitoring data.

50. For the profession to be held to account on equality, diversity, and inclusion, it is important that more data are published and made available both to the BSB and within chambers or entities. Subject to General Data Protection Rules, we would require diversity data relating to membership of chambers to be published externally as required under our current rules. However, our current rules only require diversity data to be published in relation to race, sex, and disability. Our proposed rules extend this requirement to all protected characteristics and socio-economic background.

51. We recognise that it may be inappropriate to publish externally certain sensitive information and information that may have an equality impact. For example, publishing data on work distribution, which will be available to potential clients, may have an adverse impact on certain groups. In such situations, we would expect chambers to consider publishing the data internally subject to GDPR. This would create transparency and accountability within chambers to address any disparities. We would welcome views on which equalities monitoring data should be published externally.

Recommendation 5

Equality monitoring and analysis

¹⁴ Information relating to the following characteristics in relation to an individual: age; disability; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

¹⁵ rC110.3.q

¹⁶ rC110.3.r

¹⁷ <https://www.barcouncil.org.uk/resource/race-at-the-bar-report-2021.html>

Subject to GDPR requirements, we propose to expand our requirements on equality monitoring and publication to ensure transparency and accountability on how well barristers in self-employed practice and entities are meeting the equality outcomes in the 'General Equality Rules'. We propose that the BSB adopt a rule with the following wording:

take reasonable steps annually to collect, analyse* and publish the following equality monitoring data¹⁸ internally, disaggregated by protected characteristics and socio-economic background (and make this available to the BSB on request)

For those practising in chambers and BSB entities:

- a. characteristics of the workforce in the chambers or entity (this must also be published externally);
- b. applications to become a member of the chambers or entity;
- c. distribution of work and the allocation of unassigned work in the chambers or entity;
- d. any complaints of bullying, harassment, and victimisation within the chambers or entity; and
- e. workforce feedback, which demonstrates how inclusive the culture is within the chambers or entity.

For all self-employed barristers and BSB entities:

- a. types of complaint from clients disaggregated by protected characteristics of complainants and those subject to complaints;
- b. any other equalities monitoring data you feel is pertinent to demonstrating how you meet the 'General Equality Rules'

*consider the reasons for any disparities in the data

52. Although barristers in chambers and entities would be required to take reasonable steps to collect equalities monitoring data, it would remain voluntary for individual members of the workforce to provide their equality information and to grant permission for the way in which such information could be used. Guidance will be made available to the profession to communicate the purpose of this requirement and how to deal with data in a manner that fosters confidence in those providing it. Data protection issues and risks arise in collecting, processing, storing and publishing equality monitoring data, and the Bar should have appropriate processes in place to address and mitigate such risk. Sole practitioners would be expected to focus largely on client complaints.

¹⁸ Subject to data protection laws and regulations.

Consultation question

8. *Will the requirements on monitoring and data analysis provide sufficient transparency for individual barristers to hold their chambers or entity to account?*
 9. *Should the data collection requirements include characteristics beyond those currently protected and socio-economic background? If so, which additional characteristics should be considered and why?*
 10. *Do you agree with our proposed requirement on publishing equalities monitoring data? Please explain your answer.*
-

Action plans

53. The current BSB Handbook¹⁹ requires that a barrister in a chambers or entity must take reasonable steps to ensure that there is in force a written statement of policy on equality and diversity, and there is in force a written plan implementing the policy. There is in-depth guidance on complying with this requirement. However, the guidance does not make it sufficiently clear that the implementation plan must be based on equality monitoring data or seek to achieve specific outcomes.

Recommendation 6

We propose that chambers and entities (and sole practitioners, where relevant) must have a written 'action plan' that is specific and measurable to address any disparities identified through analysing the data, which would enable the chambers or entity to implement the policies in Recommendation 3 and to achieve the equality outcomes set out in Recommendation 2.

Consultation questions

11. *Do you agree that clearer links between action plans and data will lead to more effective implementation of equality measures? What additional steps could enhance this linkage?*
-

Training

54. Under the new requirements we recommend that barristers should ensure that they, and the workforce in their place of practice, have the required skills to enable them to meet the equality outcomes. Barristers would be required to reflect on the knowledge and skills they require to meet the equality outcomes and to undertake Continuing Professional Development (CPD) where necessary. We would work with key stakeholders to ensure that training is available which supports barristers to meet the equality outcomes. We recognise that training providers will require time to adapt their training

¹⁹ rC110.1 and rC110.2

offering, and we will take this into account in implementing the proposed changes.

55. Our current rules require all members of recruitment panels to be trained in fair recruitment. Our stakeholder engagement has suggested that this training has often been too general, and often consisted of private study of the Bar Council fair recruitment guide (which is permissible under the current rules.). We now propose that barristers will be expected to reflect upon their own training needs and seek appropriate and targeted training that enables them to meet the equality outcomes, which may include fair recruitment training or other matters in accordance with their own needs and action plans. We will work with training providers to develop targeted training opportunities to meet the equality outcomes.
56. We propose that the BSB should reserve the right to mandate training requirements for the profession (or individual barristers following supervision activity or other regulatory intervention) under these rules if it is required to meet the equality outcomes of the 'General Equality Rules'. This approach is consistent with the BSB's approach to the CPD rules, where rQ137 states that we "may, by resolution specify the nature, format, content and format of courses which may be undertaken by barristers." This would enable the BSB to ensure the profession meets minimum standard in certain areas and ensure consistency of approach, where necessary. Consistency will be further achieved by working with training providers to set certain outcomes for training.

Recommendation 7

We propose the removal of the mandated "fair recruitment training" requirement, to be replaced with an outcome- focussed requirement, expressed as below in Recommendation 8

Recommendation 8

In line with our outcomes focused approach, we recommend that the BSB adopts the following rule in relation to training:

Barristers must take reasonable steps to ensure that:

- a. they have the required knowledge and skills to meet the equality outcomes.
- b. those employed in their chambers, entity, or practice have the required skills to enable the equality outcomes to be met.

The BSB may at any time set minimum requirements for training for the profession (or individual barristers following supervision activity or other

regulatory intervention) if it is required to meet the equality outcomes set out in the 'General Equality Rules'.

Consultation questions

12. *Do you agree with the proposal to remove the prescriptive requirement to undertake training on 'fair recruitment'?*
 13. *Will the proposal to replace prescriptive training with a more reflective approach lead to more purposeful CPD activities to build the skills required to meet the Equality Outcomes?*
-

Disability Access

57. Under the Equality Act 2010, chambers and entities are required to make reasonable adjustments for disabled people. There is anecdotal evidence from disabled barristers about breaches of the 'reasonable adjustment' duty, and that many chambers are not as proactive as they could (and should) be when it comes to their equality obligations in relation to those who are disabled. Our current Equality Rules require chambers to have a reasonable adjustments policy aimed at supporting disabled clients, their workforces and others including temporary visitors (rC110.m). It is good practice for chambers, entities, and sole practitioners to publish this policy on their website, alongside a statement about accessibility for disabled people in relation to different types of disability. However, evidence from our web sweep exercise, which we undertook in 2020, indicated that a majority did not do so.

58. We have also heard from disabled pupils and barristers that some chambers are not in a position to offer pupillage or tenancy to disabled barristers, and some individuals are unable to accept offers, where chambers have not been proactive in making reasonable adjustments or have been unable to do so for other reasons. This also discourages disabled barristers, including those who are neurodiverse, from applying to chambers where they know that they cannot be accommodated. We are therefore considering whether we should set more prescriptive requirements in relation to disability access. We will also consider how we or others can support the profession to meet any such requirements.

Recommendation 9

We propose that barristers in self-employed practice and entities should conduct and publish an accessibility audit in relation to disability, reviewed every five years. In light of this audit, you must take reasonable steps to:

- a. develop and publish a plan for accessibility. This plan must include specific measures that are time bound to address identified barriers to access.
- b. clearly publish on your website:
 - i) where there are barriers to access for members of the public, and your workforce;
 - ii) available reasonable adjustments that can be made to any existing barriers to increase accessibility.
 - iii) your 'Reasonable Adjustment' policy.

59. Accessibility audits are carried out in order to establish what barriers disabled people may face when accessing facilities and services. The above recommendations would apply to all forms of disabilities and impairments. This would ensure that barristers in self-employed practice and entities anticipate the needs of pupils, tenants, employees, and clients, and make reasonable adjustments. Guidance will be developed for barristers on meeting these requirements, and the expectations would be proportionate to the size of practice.

Consultation questions

14. *Do you agree with our proposals in relation to the conduct of an accessibility audit and publication requirements?*
-

Access to Premises

60. The lack of access to premises poses significant barriers to the recruitment and progression of disabled barristers. We wish to invite views on how we might best improve accessibility to premises across the profession.
61. We are currently in discussions with the Inns and relevant local authorities over how accessibility needs can better be taken into account when considering requests for planning permission for building alterations. One way of strengthening the case for such applications may be to impose a regulatory requirement in relation to accessibility of premises. For this reason, we are considering whether the recommendation below might be proportionate.
62. We would therefore welcome views on the following proposal, which would require premises to be accessible. Such a requirement would have to be implemented over a period of time (for example 5 years). This would ensure that barristers are able to reflect on and explore all options for making their premises accessible. This would include considering minor adjustments such as fitting a ramp, and / or considering more significant changes that may need to be made such as making structural changes to the building or moving to alternative premises.

Recommendation 10

We are considering whether it would be proportionate to introduce the below requirements on accessibility of premises for chambers and entities.

- we expect you to take reasonable steps to ensure that premises from which you conduct your practice are fully accessible* to all. Where full accessibility is not in place, you would be required to have a written plan that is reviewed each year (and made available to the BSB on request) to ensure that the premises from which you operate will be fully accessible as soon as practicable, and in any event within five years of the Equality Rules coming into force unless there is a reasonable justification for not being able to achieve this. This applies even when no current pupils or tenants have any mobility impairments.
- where chambers and entities operate from premises that are not fully accessible and do not expect premises to be accessible within five years, this must be reasonably justified.

*Pupils and tenants who are mobility impaired are able to fully integrate into chambers. There is independent access to enter and exit the building, and move within the building to independently access toilets, communal areas, a conference room, and clerks' room.

Consultation questions

15. *Do you agree with our proposed requirements to improve access to premises of chambers and entities for disabled people? Please explain your answer*
 16. *Is the requirement, set out in **Recommendation 10**, a proportionate means of achieving the equality outcomes of the 'General Equality Rules'? Please explain your answer*
-

Removal of prescription of EDO and DDO roles

63. Our current rules stipulate that chambers and entities have at least one Equality and Diversity Officer (EDO) and a Diversity Data Officer (DDO). At present, the EDO is often our first point of contact in chambers in relation to equality, diversity and inclusion issues. Our Supervision team has engaged with very dedicated EDOs over the years, many of whom have taken on these roweb pales due to their own interest in, and commitment to, tackling equality,

diversity and inclusion issues. We have also heard from chambers that having an EDO has been helpful in managing compliance with the Equality Rules. However, during our engagement events with chambers and EDOs we have also heard that this role is often delegated to a junior member of chambers from an underrepresented group, e.g. Black, female, LGBTQ+, etc. Concerns have been shared with us that this places a disproportionate burden on junior members of the Bar from minoritised ethnic backgrounds, and can impact progression, especially in larger chambers, where collecting equalities monitoring data may be time consuming. It was also felt that senior members of chambers may avoid engaging directly with equality, diversity and inclusion issues by delegating responsibility to more junior members. For these reasons we are considering removing this requirement. For the avoidance of doubt, this is not intended to be a dilution of these responsibilities in chambers, but rather to ensure that someone of appropriate seniority leads this work and that responsibilities are allocated fairly.

64. Whilst we may no longer mandate the appointment of EDO and DDO officers, chambers and entities could of course continue to do so if it assists with meeting the requirements of the equality rules. However, they should be mindful of any adverse impacts of assigning these roles to junior members of the Bar from minoritised ethnic groups²⁰ and sole responsibility of complying with the requirements under the proposed equality rules should not be placed on junior members of the Bar from minoritised ethnic groups.

Recommendation 11:

We propose to remove the mandatory requirement to appoint an Equality and Diversity, and Diversity Data Officers (EDO and DDO roles).

²⁰“ Minoritised groups” refers to those who are under-represented and/or disadvantaged within the profession.

Consultation questions

17. *Do you agree with the proposal to remove the mandatory requirement to appoint Equality and Diversity, and Diversity Data Officers? If so, how could chambers and entities manage these responsibilities moving forward?*
-

General consultation questions

18. *Do the prescriptive requirements within the rules:*
- a) *enable barristers to take a reflective approach to achieving the equality outcomes?*
 - b) *ensure specific, measurable and timely action is taken to address disparities?*
19. *Is there sufficient clarity on what is expected under our new proposals from:*
- a) *barristers within chambers and entities*
 - b) *sole practitioners*
 - c) *employed barristers?*
20. *Are any of the requirements on sole practitioners disproportionate?*
21. *Are our proposals to improve disability access proportionate? Please explain your answer.*
22. *Do you foresee any specific problems that barristers, chambers or entities might face in complying with these proposed rules? How might these problems be mitigated?*
-

Implementation

65. We recognise that the profession will need time to adapt to the changes that we propose. It will also be necessary for other organisations, such as the Bar Council and others, to prepare to support the profession in implementing these new rules. We therefore expect that we will give a period of time to enable the profession to implement those new rules that require changes to how their practice is managed. This is likely to be around a year. We welcome

views on the implementation challenge in relation to these new requirements. Following this initial period, our focus for the practice management requirements would be on supporting the profession through supervision before taking any enforcement action. Therefore, we will use a range of tools, including communications, supervision and enforcement to support implementation.

66. Supervision activities may include regular spot checks on a sample of chambers, entities, and sole practitioners to monitor compliance and progress towards the equality outcomes. We would review available data at organisation level, and the action plans and policies to ascertain whether the profession is taking a reflective approach and taking specific and measurable steps to meet the equality outcomes.
67. If we proceed with the rule on making premises accessible within five years of the introduction of the rules, we would envisage requiring chambers and entities to make a declaration to the BSB after 3 years on whether or not they are fully accessible or expect to be fully accessible within the five-year period. Where this is not the case, we would expect a reasonable justification and the BSB will consider the justification on a case-by-case basis, ensuring that we take a proportionate approach to the enforcement of this rule. Any decision to take enforcement action would be facts-specific. Where members of chambers and entities have made reasonable efforts to make their premises accessible, and where there are justifiable reasons that would prevent moving premises (for example affordability, support provided by the Inns etc.), we will not take enforcement action.
68. Enforcement action for non-compliance with the equality rules, as with all rules, will be taken against barristers who are responsible for the breach of the rules or for failure to co-operate with the regulator. In determining the level of responsibility, we will consider their role, level of involvement, and seniority within the relevant practice. Core Duty 8 and the new equality rules will interact with Core Duty 10 of the Handbook which states that all barristers must take reasonable steps to manage their practice, or carry out their role within their practice, competently and in such a way as to achieve compliance with their legal and regulatory obligations. It is clearly, therefore, the responsibility of every barrister to comply with our expectations.

Evaluation of the Equality Rules

69. We will judge our success by whether we have met the outcomes that we set for ourselves and the profession. Over the five-year period of our next strategy, we will track a number of indicators to evaluate progress. As part of this consultation, we welcome views on how best we might do this, but we expect to track a combination of the following indicators:
 - Demographic change in the profession, both overall and by level of seniority, area of practice etc.
 - Reported experience of bullying, discrimination and harassment by members of the profession, with feedback on the overall

inclusiveness of the culture at the Bar and how that affects retention, progress and wellbeing.

- Recruitment trends and identified barriers.
- Consumers' experiences of the profession.

70. We would consider obtaining baseline data at organisation level from a sample of chambers, entities, and sole practice one year from the implementation of the rules to measure our progress against the above indicators. We would also use other qualitative and quantitative data available to the BSB through research carried out as well as data on the diversity of the profession available through the Authorisation to Practise process in order to measure progress.

Consultation question

23. *How can we effectively gather and incorporate feedback from those affected by the new rules to ensure continuous improvement? What mechanisms should be in place to evaluate the effectiveness of the new rules in achieving their intended outcomes?*

Responding to the Consultation

71. We invite written responses by 5PM on 29 November. You do not need to wait until the deadline to respond to this consultation. Please use the form provided to submit your response to: equality@BarStandardsBoard.org.uk.

72. If you have a disability and need to access this consultation in an alternative format, such as larger print or audio, please let us know. Please also let us know if there is anything else we can do to facilitate feedback other than via written responses.

73. Whatever form your response takes, we will normally want to make it public and attribute it to you, or your organisation, and publish a list of respondents. If you do not want to be named as a respondent to this consultation, please let us know in your response.

Consultation questions

1. Do you agree with the new positive Core Duty (CD8) (and consequential amendments), which goes beyond the duty not to discriminate unlawfully? (Recommendation 1)
2. Are there examples of conduct, both within and outside of a barrister's practice, that should be prohibited but are not captured by this duty? (Recommendation 1)
3. Is our approach to the proposed Core Duty appropriate for those at the Employed Bar? (Recommendation 1)
4. Do you agree that the Equality Rules should take an outcomes-based approach, supported by prescriptive requirements that enable barristers to meet the outcomes? (Recommendation 2)
5. Have we identified the correct priority areas (recruitment, retention, and progression)? (Recommendation 2)
6. Are there any further outcomes we should seek to achieve through the Equality Rules? (Recommendation 2)
7. Regarding policies:
 - a) do you agree with the list of required policies in Recommendation 3;
 - b) do you agree that a non-prescriptive approach to the required policies will result in a more reflective and meaningful approach?
 - c) how can we ensure that this approach is appropriately targeted to the needs of different practices? (Recommendation 4)
8. Will the requirements on monitoring and data analysis provide sufficient transparency for individual barristers to hold their chambers or entity to account? (Recommendation 5)
9. Should the data collection requirements include characteristics beyond those currently protected and socio-economic background? If so, which additional characteristics should be considered and why? (Recommendation 5)
10. Do you agree with our proposed requirement on publishing equalities monitoring data? Please explain your answer. (Recommendation 5)
11. Do you agree that clearer links between action plans and data will lead to more effective implementation of equality measures? What additional steps could enhance this linkage? (Recommendation 6)
12. Do you agree with the proposal to remove the prescriptive requirement to undertake training on 'fair recruitment'? (Recommendation 7)

13. Will the proposal to replace prescriptive training with a more reflective approach lead to more purposeful CPD activities to build the skills required to meet the Equality Outcomes? (Recommendation 8)
14. Do you agree with our proposals in relation to the conduct of an accessibility audit and publication requirements? (Recommendation 9)
15. Do you agree with our proposed requirements to improve access to premises of chambers and entities for disabled people? Please explain your answer. (Recommendation 10)
16. Is the requirement, set out in Recommendation 10, a proportionate means of achieving the equality outcomes of the 'General Equality Rules'? Please explain your answer.
17. Do you agree with the proposal to remove the mandatory requirement to appoint Equality and Diversity, and Diversity Data Officers? If so, how could chambers and entities manage these responsibilities moving forward? (Recommendation 11)

General Questions

18. Do the prescriptive requirements within the rules:
 - a) enable barristers to take a reflective approach to achieving the equality outcomes?
 - b) ensure specific, measurable and timely action is taken to address disparities?
19. Is there sufficient clarity on what is expected under our new proposals from:
 - a) barristers within chambers and entities
 - b) sole practitioners
 - c) employed barristers?
20. Are any of the requirements on sole practitioners disproportionate?
21. Are our proposals to improve disability access proportionate? Please explain your answer.
22. Do you foresee any specific problems that barristers, chambers or entities might face in complying with these proposed rules? How might these problems be mitigated?
23. How can we effectively gather and incorporate feedback from those affected by the new rules to ensure continuous improvement? What mechanisms should be in place to evaluate the effectiveness of the new rules in achieving their intended outcomes?

Annex A - Draft Equality Rules

Core Duties

CD8 You must act in a way that advances equality, diversity and inclusion.

Part 2 – C2 Behaving ethically

Outcomes

oC8 Those regulated by the Bar Standards Board act in a way that advances equality, diversity and inclusion, and take steps to prevent unlawful discrimination and other unlawful conduct (under the Equality Act) in their practice.

General Equality Rules

Barristers in self-employed practice and BSB entities must take reasonable steps to meet the following equality outcomes for those who share particular protected characteristics and/ or socio-economic background:

- eliminate unlawful discrimination and advance equality of opportunity, particularly in relation to recruitment, retention, and progression;
- prevent bullying, harassment, and victimisation, and have systems in place to respond to such behaviour;
- ensure access to your services; and
- promote an inclusive culture.

Specific Requirements

In order to meet the outcomes set out in the 'General Equality Rules' and to demonstrate you are meeting those outcomes, you, through your chambers, entity²¹, or practice, must:

1. Policies

have in place the following policies, where applicable for the nature of your practice, that enable appropriate grievances to be raised:

- a. Equality, diversity and inclusion policy
- b. Anti-harassment and bullying policy
- c. Reasonable adjustment policy
- d. Flexible working policy
- e. Parental leave policy
- f. Allocation of unassigned work policy

²¹ BSB Authorised Bodies or BSB Licensed Bodies (<https://www.barstandardsboard.org.uk/for-barristers/bsb-entities.html>).

2. Equality monitoring

take reasonable steps annually to collect, analyse* and publish the following equality monitoring data²² internally, disaggregated by protected characteristics and socio-economic background (and make this available to the BSB on request)

For those practising in chambers and BSB entities:

- a. characteristics of the workforce in the chambers or entity (this must also be published externally);
- b. applications to become a member of the chambers or entity;
- c. distribution of work and the allocation of unassigned work in the chambers or entity;
- d. any complaints of bullying, harassment, and victimisation within the chambers or entity; and
- e. workforce feedback, which demonstrates how inclusive the culture is within the chambers or entity.

For all self-employed barristers and BSB entities:

- a. types of complaint from clients disaggregated by protected characteristics of complainants and those subject to complaints;
- b. any other equalities monitoring data you feel is pertinent to demonstrating how you meet the 'General Equality Rules'

*consider the reasons for any disparities in the data;

3. Action plan

have in place a written action plan that is specific and measurable to address any disproportionate impact identified through analysing the data (Rule 2), which would enable your chambers or entity to implement the policies (Rule 1).

²² Subject to data protection laws and regulations.

4. Disability Access

conduct and publish internally and make available to the BSB an accessibility audit in relation to different types of disability, reviewed every five years. In the light of this audit, you must take reasonable steps to:

- a) develop and publish a plan for accessibility. This plan must include specific measures that are time bound to address identified barriers to access.
- b) clearly publish on your website:
 - i. where there are barriers to access for members of the public, pupils, tenants and employees;
 - ii. available reasonable adjustments that can be made to any existing barriers to increase accessibility;
 - iii. your 'Reasonable Adjustment' policy.

5. Access to Premises

Those practising in chambers or BSB entities must ensure that premises from which you practise are physically accessible to all²³. Where this cannot be achieved you should have a written plan that is reviewed each year (and made available to the BSB on request) to ensure that the premises you operate from will be made fully accessible to all as soon as practical, and in any event within five years of the implementation of the Equality Rules. This applies even when no current pupils or tenants have any mobility impairments. Where chambers and entities operate from premises that are not accessible and do not have a written plan that ensures accessibility within five years, this must be reasonably justified.

6. Training

You must take reasonable steps to ensure that:

- a. you have the required knowledge and skills to meet the equality outcomes.

²³ *Pupils and tenants who are mobility impaired are able to fully integrate into chambers. There is independent access to enter and exit the building, as well as move within the building to independently access toilets, communal areas, a conference room, and clerks' room.*

- b. those employed in your chambers, entity, or practice have the required skills to enable the equality outcomes to be met.

The BSB may at any time set minimum requirements for training for the profession (or individual barristers following supervision activity or other regulatory intervention) if it is required to meet the equality outcomes set out in the 'General Equality Rules'.

Annex B - Discussion and Evidence: The Proposed Mandatory Outcomes

Outcome a) take reasonable steps to eliminate unlawful discrimination and advance equality of opportunity

1. The priority areas that we have identified to promote this requirement are recruitment, work allocation and progression.

Recruitment

2. Aspiring barristers from minoritised ethnic backgrounds face barriers in entering the profession compared to their White counterparts. Our data show that home domiciled BPTC graduates who were from minoritised ethnic backgrounds were around half as likely to obtain pupillage as White graduates with similar attainment at both the BPTC and undergraduate level. Similarly, BPTC graduates without a degree-educated parent (used as a proxy for socio-economic status) are also less likely than those who did have a parent with a degree, being two thirds as likely to obtain pupillage once prior attainment is taken into account²⁴.
3. Our research into pupillage recruitment²⁵ found that while culture was rarely seen by providers as an outright barrier to recruiting for more diverse outcomes, several pupillage providers did recognise that there could be an issue with affinity bias (where recruiters unconsciously favour applicants similar to themselves) within their recruitment process. Some pupillage providers noted that while applicants from diverse backgrounds were passing through the initial application and potentially the first interview, for the final interview it became more difficult to ignore the 'polish' of candidates from certain backgrounds.
4. The data from our Diversity at the Bar Report 2023²⁶ suggest that a disproportionately high number of barristers attended a UK independent school. The figures show that even if all of the barristers who chose not to respond had gone to state schools, the proportion of barristers who went to independent schools would be higher than in the wider population. Of those that provided information on school attended, 33.3 per cent attended an

²⁴ Bar Standards Board (BSB), Exploring differential attainment at BPTC and Pupillage (2019), available at <https://www.barstandardsboard.org.uk/static/f69a9410-c170-4f82-b4b500d5b9e0df8a/Differential-Attainment-at-BPTC-and-Pupillage-analysis.pdf>

²⁵ Bar Standards Board (BSB), Pupillage Recruitment Research (2024), available at <https://www.barstandardsboard.org.uk/resources/resource-library/bar-standards-board-publishes-two-reports-on-pupillage-recruitment-at-the-bar.html>

²⁶ Bar Standard Board (BSB), Diversity at the Bar Report (2023), available at <https://www.barstandardsboard.org.uk/resources/bsb-publishes-its-annual-report-on-diversity-at-the-bar.html>

independent school in the UK As of December 2023, 19.4 per cent of the Bar (including non-respondents) attended an independent school for the most of the period between 11-16, compared to approximately 6.5 per cent of school children in England at any age, and 9.8 per cent of UK domiciled full-time first degree entrants in the UK in 2020/21 attending a non-state school prior to university.

5. We propose to work with stakeholders to develop guidance on fair recruitment and selection processes that are more specific and in depth, covering anti-racist recruitment practices, as well as promoting inclusion for those who share other characteristics. We will also work with training providers such as the Inns and the Bar Council to develop training objectives and to make available training that meets the equality outcomes of the proposed 'General Equality Rules'. Our new approach to training in this area is discussed in recommendations 7 and 8.

Work distribution

6. Work distribution is key to progression and retention at the Bar. Our research suggests that female barristers and barristers from minoritised ethnic backgrounds may face inequality in the distribution of work within chambers²⁷. Female barristers and barristers from minoritised ethnic backgrounds earn less in comparison to male and White British barristers, even when area of practice and years of experience are considered²⁸.
7. Participants in a race equality event that we hosted suggested that this was because the profession selects and progresses in its own image. It was also felt that this bias was sustained by the conduct of solicitors when referring work. Additionally, the Bullying, Discrimination, and Harassment at the Bar report²⁹ highlighted the unique interplay between barristers and clerks, whereby the barristers rely on clerks for allocation of work, but may be unsure of how the clerking teams operate and make decisions. These issues were compounded by a lack of transparency within many chambers, particularly around the distribution of work.
8. Research from Royal Holloway, University of London³⁰ shows that barristers who appear before the Supreme Court are more likely to do so with other

²⁷ Bar Standards Board (BSB), Bullying, Discrimination and Harassment at the Bar research (2020), available at <https://www.barstandardsboard.org.uk/static/896b55e0-72b2-4388-be291617735b8a25/e5923260-c53a-4176-8b6bc7d4c22f0fb4/October-2020-BDH-at-the-Bar-full-report.pdf>

²⁸ Bar Standards Board (BSB), Income at the Bar – Gender and Ethnicity Research (2020), available at <https://www.barstandardsboard.org.uk/static/1ee64764-cd34-4817-80174ca6304f1ac0/Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf>

²⁹ Bar Standards Board (BSB), Bullying, Discrimination and Harassment at the Bar research (2020), available at <https://www.barstandardsboard.org.uk/static/896b55e0-72b2-4388-be291617735b8a25/e5923260-c53a-4176-8b6bc7d4c22f0fb4/October-2020-BDH-at-the-Bar-full-report.pdf>

³⁰ Royal Holloway University, Replication Data for: Patronising Lawyers? Homophily and Same-Sex Litigation Teams Before the UK Supreme Court (2017), available at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/NOFKNI>

barristers of the same gender and that male lawyers are more likely to appear than female lawyers. Similar findings were also found in a report by the Association of Women Barristers³¹: ‘judges sitting in the Employment Appeal Tribunal commented that the vast majority of those appearing before them as leading counsel were men. This appears to be mirrored in other specialist areas of the Bar’. These findings suggest women can be overlooked in allocating leading briefs which may impede career progression.

9. Available evidence suggests that awareness of work allocation monitoring is low, and that when barristers query work allocation, although some are satisfied with the response they receive, many are not, with a lack of transparency the most common issue raised. There are also claims of victimisation of barristers who query work allocation, where it has resulted in the barrister receiving less work and feeling ostracised³².
10. The current Handbook³³, under ‘fair access to work’ states that, if you are a self-employed barrister, the affairs of your chambers must be conducted in a manner which is fair and equitable for all members of chambers, pupils and / or employees (as appropriate). This includes, but is not limited to, the fair distribution of work opportunities among pupils and members of chambers.
11. The Handbook also requires chambers regularly to review the allocation of unassigned work and investigate the reasons for any disparities in those data and take appropriate remedial action³⁴. The current rule, however, only requires data on race, disability, and gender.
12. ‘Allocation of unassigned work’ includes, but is not limited to, work allocated to pupils; barristers of fewer than four years’ standing; and barristers returning from parental leave.
13. Our current Equality Rules only require chambers to collect and analyse data about the allocation of unassigned work, rather than publish or share these data internally. This may mean they are less effective at ensuring fair work allocation. Furthermore, they currently only require data on race, disability, and gender to be collected and analysed. The report on ‘Bullying, Discrimination, and Harassment at the Bar’³⁵ has highlighted that this is an issue faced by other groups, which includes those of certain sexual orientation, religion and

³¹ Lynne Townley and HHJ Kaly Kaul QC, In the age of ‘us too?’: Moving towards a zero-tolerance attitude to harassment and bullying at the Bar, A report on the association of women barristers’ roundtable on harassment and bullying with recommendations (2019)

³² Bar Standards Board (BSB), Bullying, Discrimination and Harassment at the Bar research (2020), available at <https://www.barstandardsboard.org.uk/static/896b55e0-72b2-4388-be291617735b8a25/e5923260-c53a-4176-8b6bc7d4c22f0fb4/October-2020-BDH-at-the-Bar-full-report.pdf>

³³ rC110.3.i

³⁴ rC110.3.f and .g

³⁵ Bar Standards Board (BSB), Bullying, Discrimination and Harassment at the Bar research (2020), available at <https://www.barstandardsboard.org.uk/static/896b55e0-72b2-4388-be291617735b8a25/e5923260-c53a-4176-8b6bc7d4c22f0fb4/October-2020-BDH-at-the-Bar-full-report.pdf>

belief, and socio-economic background, and those with parental responsibilities.

14. We therefore recommend (recommendation 6) that chambers are expected to collect, analyse, and publish data about the allocation of work, disaggregated where feasible, by protected characteristics and socio-economic background. We will develop guidance for the profession in partnership with the Bar Council and others on work allocation. We will make clear (recommendation 4) that chambers are expected to have a policy on the allocation of unassigned work. This would include assigned work that needs to be re-allocated, as well as the type of work assigned.

Progression

15. The research on Bullying, Discrimination, and Harassment at the Bar found that professional networking events held in establishments such as pubs and bars often excluded underrepresented barristers, such as barristers with caregiving responsibilities and those from certain religious backgrounds, from attending due to the events being alcohol-related and generally held in the evenings. This sentiment was also expressed by members of our Religion and Belief Taskforce, who felt that the culture of professional networking in bars and pubs excluded those who do not drink due to religious reasons. The research also found that sex discrimination was most commonly experienced and/or witnessed when women barristers had children or were pregnant. Some women barristers felt that being not part of the old boys' network impacted the amount of work that was allocated to them.
16. Similarly, a Law Society survey³⁶ of around 8,000 female legal professionals around the world found that traditional networks/routes to promotion were more male oriented, and an unacceptable work/life balance demanded to reach senior levels were both frequently cited as major barriers to career progression (reported by 46% and 49% of respondents respectively). Unconscious bias was the most frequently cited major barrier to career progression reported by the survey respondents (52%). Monitoring patterns of instructions and where they come from, disaggregated by protected characteristics and socio-economic background, is essential to creating transparency, which would enable progression opportunities for everyone. Anecdotal evidence from chambers has shown that publication of equality monitoring data, and the resulting transparency and accountability on work allocation, can lead to significant progress in tackling income disparities.
17. Our proposed new rules set out new expectations (recommendation 6) for the collection, publication and analysis of any disproportionate impact in recruitment, retention, and progression at the Bar for those who share

³⁶ Law Society, Women in the Law Infographic (2018), available at <https://www.lawsociety.org.uk/news/press-releases/largest-ever-survey-on-gender-equality-in-legal-profession/>

particular protected characteristics and socio-economic backgrounds.

Outcome b) take reasonable steps to prevent and respond to bullying, harassment, and victimisation.

18. Available evidence suggests that bullying, discrimination and harassment remain issues at the Bar, with female barristers, barristers from minoritised ethnic backgrounds, disabled barristers, barristers with caring responsibilities, barristers of particular religions and beliefs, and LGBTQ+ barristers particularly affected.
19. The Bar Council's Barristers Working Lives report 2021³⁷ found that three in ten female barristers had experienced bullying and harassment at work in person compared with 11 per cent of male barristers, and three times as many female barristers have experienced discrimination at work (21%, compared with 7% of male barristers). 43% of female barristers responding to the survey reported that they have personally experienced bullying, harassment, or discrimination at work, either in person or online, compared with 17 per cent of male barristers. If witnessing bullying, harassment, and discrimination is included, the numbers increase to more than half of all female barristers (51%), more than twice the figure of male barristers reporting the same (25%).
20. Additionally, the report found that race strongly correlates with bullying, harassment, and discrimination, with more than a half (53%) of all barristers with Black / Black British, African, and Caribbean backgrounds reporting that they have personally experienced these behaviours while working at the Bar. The equivalent figures for Asian / Asian British, mixed origin and White respondents are 47 per cent, 46 per cent, and 26 per cent respectively. There was also a compounding effect of sex and ethnicity on the likelihood of barristers experiencing bullying and harassment. 58% of female barristers from minoritised ethnic backgrounds have personally experienced bullying and harassment at work or online compared with 15% of White male barristers.
21. A strong correlation was also found between disability and experiences of bullying, harassment, and discrimination, with 45 per cent of all barristers who report having a disability, compared with 27% of those who report no disability, having experienced bullying, harassment, and discrimination.
22. The report also found that barristers who were educated in state schools were more likely to indicate experience of bullying, harassment, and discrimination, than those from independent schools (32% compared with 24% respectively).

³⁷ Bar Council, Barristers Working Lives Survey (2021), available at <https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

23. Research suggests that reporting levels of barristers' experience of bullying, discrimination or harassment are low³⁸. Research also suggests that concern about the impact on their career is the most important barrier to formally reporting experiences. However, there is some evidence that reporting of harassment appears to have increased slightly after the BSB Handbook's current Equality Rules were introduced.

24. In addition to the requirement for chambers to maintain a bullying and harassment policy (recommendation 4) we further propose to develop guidance (or signpost to guidance available elsewhere) for barristers in chambers and entities on undertaking investigations and addressing bullying and harassment at organisation level.

Outcome c) take reasonable steps to ensure equal access to services.

25. Access to justice is one of our regulatory objectives. As such we must not only ensure that the profession is representative of the population it serves, but also ensure that the profession is able to serve diverse clients, and that there are no unjustifiable barriers that disproportionately impact particular groups. This includes barristers having the skills and understanding to engage effectively with vulnerable groups. Barristers should also consider the way in which they provide their services to ensure there are no physical or other barriers.

26. Research conducted by the Bar Standards Board explored barristers' clients' journeys and looked at the impact of digitisation on non-internet users. It was found that whilst the digitisation of justice made the delivery of legal services more accessible and efficient, it also created additional barriers for some consumers who are less digitally confident or have no digital access.

27. Furthermore, the BSB's research found that online guidance and advice did not fully support those who are not digitally able, as some consumers felt there was a lack of specialist advice available to vulnerable users. The research also found that advice is particularly important when any type of vulnerability is combined with a lack of confidence in the legal process, as many consumers may need extra support. The BSB is currently conducting further research on digital exclusion in collaboration with other regulators.

28. In May 2024, the LSB published new and updated requirements, guidance and a policy statement to legal services regulators on handling first-tier complaints³⁹. Specifically, it states that legal service regulators should identify any recurring issues or trends using data and intelligence from first and second-tier complaints from which the legal services sector can learn lessons, and share best practice. In doing so, regulators are expected to give particular

³⁸ Bar Standards Board (BSB), Bullying, Discrimination and Harassment at the Bar research (2020), available at <https://www.barstandardsboard.org.uk/static/896b55e0-72b2-4388-be291617735b8a25/e5923260-c53a-4176-8b6bc7d4c22f0fb4/October-2020-BDH-at-the-Bar-full-report.pdf>

³⁹ LSB [Requirements, Guidance and a statement of policy to regulators](#) 2024

consideration to legal services users with protected characteristics and/or who are in vulnerable circumstances, and take action accordingly.

29. We know from Legal Ombudsman complaints data, for example, that a disproportionate number of complainants have identified as having a disability. However, we do not know whether the complaint relates to a lack of access due to their disability. We do not have sufficient data to understand the nature of the problem in order to address it, and we do not have any evidence to believe that complaints data disaggregated by protected characteristics is systematically collected and analysed by the profession. In recommendation 6 we propose a requirement that chambers, entities, and sole practitioners collect and analyse complaints data by the nature of the complaint, disaggregated by the protected characteristics of the complainants as well as (in the case of chambers and entities), those subject to complaints.

Outcome d) take reasonable steps to promote an inclusive culture.

30. A work environment that meets all the other stated outcomes would contribute to an inclusive culture. However, an inclusive culture is more than the absence of negative or unlawful behaviour, and includes the positive values, behaviours, and norms that define a professional environment. It is important for the Bar to take pride in the general collegiate atmosphere and commitment within Chambers and entities, and the profession in general, where members of the profession are supportive of each other. However, it is important to recognise the aspects of the culture at the Bar that can exclude certain groups and therefore impact the public interest and our regulatory objectives.

31. Disabled barristers recount instances of non-inclusive practices that are within the control of the profession, such as social and networking events often designed around non-inclusive activities. The Legally Disabled research⁴⁰ cited the adverse impact of a culture of presenteeism for some disabled practitioners e.g. if a disabled person works flexibly and has a condition which involves fatigue, but their chambers only runs physical networking events and has a culture of “rewarding” barristers who attend.

32. The impact of this will depend on the nature of the disability but can present significant challenges, whether physical or emotional, and diminish the collegiality at the Bar. Research suggests this is not limited to practising barristers and can also impact those who are training, as the culture of the Bar places value on pupils undertaking activities that demonstrate their commitment to the profession. This could be, for example, work experience placements organised by Chambers. Obtaining and participating in these opportunities, and ultimately securing pupillage, can be more challenging for those who lack informal networks as they may face obstacles in accessing this knowledge and experience.

⁴⁰ Professor Debbie Foster et al., Cardiff Business School, Legally Disabled? The career experiences of disabled people working in the legal profession, (2020), [34]

33. Those who lack cultural capital⁴¹ may face disadvantage due to the nature or design of networking and recruitment events. The culture in some chambers places an emphasis on the relationships someone has formed in chambers (for example, during pupillage.) This can disadvantage barristers from under-represented groups if one of the ways to form those relationships is through non-inclusive events.⁴²
34. We have heard that a lack of understanding and awareness of neurodiversity can present a challenging environment for some barristers and clients. This may have led to an unwillingness to share information from neurodiverse communities. Greater awareness and a clearer understanding of the untapped talent and competitive advantage of a neurodiverse workforce would encourage neurodiverse barristers to request reasonable adjustments that help them reach their full potential. It may also help recruit talent into the profession. We will work with stakeholders to develop guidance on creating and embedding a neuroinclusive culture.
35. Flexible working, maternity and parental leave policies are important elements of inclusive practices. We know that the majority of barristers' workplaces have a parental leave policy and a flexible working policy in place. However, the evidence suggests the impact on the practice of women taking parental leave is negative in many cases, three quarters of barristers who have done so cite negative impacts, with impact on work allocation and career progression the most common issues experienced. Research has also highlighted issues faced by those making use of flexible working policies, particularly those with caring responsibilities, with an impact on work allocation or progression the most common issues, as well as negative attitudes from clients or chambers towards those who worked flexibly.⁴³
36. In line with our 'outcomes-based' approach to regulation, we will no longer establish minimum expectations for flexible working and parental leave. We will instead expect to see development of policies which enable organisations to meet the equality outcomes. In our supervision activity, policies will not be looked at in isolation, but rather in conjunction with the equality data and the action plans (recommendation 5 & 6) and monitored against the equality outcomes.

⁴¹ Annex C – Glossary of Terms

⁴² Bar Standards Board (BSB) & NatCen Social Research, Barriers to training for the Bar: a qualitative study(2017), available at <https://www.barstandardsboard.org.uk/static/5fadd1cf-19b8-49df-bf2c25a32fa29fd2/Barriers-to-Training-for-the-Bar-research.pdf>

⁴³ Bar Standards Board (BSB), Women at the Bar research, available at <https://www.barstandardsboard.org.uk/static/14d46f77-a7cb-4880-8230f7a763649d2c/womenatthebar-fullreport-final120716.pdf>

Annex C – Glossary of Terms

Chambers* – the BSB currently defines chambers as a place at or from which one or more self-employed barristers or BSB entities carry on their practices and also refers where the context so requires to all the barristers (excluding pupils) and BSB entities who for the time being carry on their practices at or from that place. *Please note that this definition is currently under review and is subject to future amendments

Cultural Capital – is the advantage that individuals and groups have due to their access to education, family background, and networks. The concentration of cultural capital among certain social groups can lead to inequalities in opportunities and life outcomes, and has a significant impact on social mobility

Entity – a body that is authorised or licensed by the BSB to undertake reserved legal activities, where barristers and other legal professionals may be employed.

Minoritised Ethnic Groups - a collective term which usually refers to racial and ethnic groups that are in a minority in the population.

Neurodiversity - is the natural variation in human brain functioning. It refers to the fact that all human brains are 'wired' differently in terms of information processing, communication and sensory processing.

Neuroinclusion - is creating an inclusive environment that values and supports individuals with diverse neurocognitive abilities.

Protected Characteristics – refers to the nine characteristics protected under the Equality Act 2010 (Age, race, sex, disability, sexual orientation, religion and belief, gender reassignment, marriage and civil partnership, pregnancy and maternity.)

Self-employed practice – this refers to the mode of practice as a self-employed barrister either within a chambers or as a sole practitioner.

Socio-economic background – a term used to refer to 'a combination of an individual's income, occupation and social background. Socio-economic background is a key determinant of success and future life chances.'⁴⁴

Workforce – The BSB Handbook provides the following definitions, where workforce means:

- a) in the case of a Chambers, the staff, barristers, pupils and assessed mini-pupils; and
- b) in the case of a BSB entity, the employees, managers, pupils and assessed mini-pupils

⁴⁴ <https://www5.open.ac.uk/equality-diversity/content/socio-economic-background#:~:text=Defined,success%20and%20future%20life%20chances.>