



## **Equality Rules Consultation FAQs**

### **Why are you proposing to amend the core duty?**

All our research and all the Bar Council's recent research suggest that, while progress is clearly being made in making the Bar a more equal and inclusive profession there is still work to be done. With regards to pay, obtaining pupillage, career progression or the prevalence of bullying and harassment all the evidence indicates that the Bar is still not a profession where merit alone determines one's success.

Therefore, we are proposing a new more positive core duty and that is not at all unprecedented as some people have suggested in response to the consultation. If a barrister wishes to become a KC, for example, King's Counsel Appointments will assess applicants against their Competency D which requires that a candidate "demonstrates an understanding of diversity and cultural issues, respects the needs and cultural wishes of others and is proactive in addressing the needs of people from all backgrounds and promoting diversity and equality of opportunity". That's broadly aligned with what our proposed core duty is seeking to require too. Similarly, the Professional Statement (which details the knowledge, skills and attributes that barristers must demonstrate in order to practise) includes a requirement that barristers be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others (more detail on this requirement is included in the consultation document.)

### **Do these proposals go beyond proper regulatory aims?**

The [Legal Services Act 2007](#) includes "encouraging an independent, strong, diverse and effective legal profession" among its regulatory objectives, and section 28 of that Act says that in exercising our regulatory functions legal regulators must "so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives, and which the approved regulator considers most appropriate for the purpose of meeting those objectives."

In developing our proposals, we have considered whether they are an appropriate way to meet the statutory objective.

### **Am I able to represent a client whose views/beliefs may be considered contrary to advancing equality, diversity, and inclusion?**

Yes. The proposed duty would not affect the "cab rank" rule or the duty not to discriminate (rC28 and rC29) under the BSB Handbook which together oblige barristers not to discriminate between clients, and include the obligation to represent clients even if the conduct, opinions or beliefs of the prospective client are considered to be contrary to advancing equality, diversity, and inclusion. These rules together promote access to justice by ensuring everyone has equal access to legal representation and having their case heard. Core Duty 8 is largely focused on practice management – for example ensuring the place from which one practises has fair recruitment practices, fair distribution of work, has



measures in place to prevent bullying and harassment, ensuring one has the required EDI competences to provide effective services to those who share protected characteristics, etc. We are also concerned that there should be equal access to your services.

### **How can I advance Equality, Diversity and Inclusion as a barrister?**

The consultation document proposes that barristers manage their practice in a way that advances equality, diversity, and inclusion. For the self-employed Bar, we have proposed rules that require barristers to take reasonable steps to meet the equality outcomes to eliminate discrimination, advance equality of opportunity in recruitment, retention, and progression; prevent bullying, harassment and discrimination, ensure access to services, and promote an inclusive culture. To support the profession to meet these outcomes we have set a framework of specific requirements, which include monitoring equality data to identify disparities, setting action plans with specific and measurable actions to address the disparities identified, and having clear policies in place for meeting the equality outcomes. This is only a requirement to take 'reasonable steps', not a requirement to have achieved the 'equality outcomes'. This duty is similar to the 'positive action' provision within the Equality Act 2010, and it is not a duty to take affirmative action or to introduce quota systems. The key to meeting these outcomes is to take a reflective approach, which includes reflecting on one's place of practice as well as one's own competencies and skills for meeting the equality outcomes.

### **What would a failure to act in a way that advances equality mean in practice - could barristers face enforcement action?**

The proposed 'Equality Rules', which would apply to self-employed barristers and entities, set out the main expectations for those groups. Therefore, a failure to act in a way that advances equality, diversity, and inclusion would involve not taking reasonable steps to meet the 'equality outcomes' set out in the proposed 'General Equality Rules', and a failure to take reasonable steps to meet the requirements set out in the 'Specific Requirements' section of the Equality Rules. So, for example failing to promote equality of opportunity in recruitment or to seek to prevent bullying, harassment and discrimination might be such a failure. As long as a barrister does whatever is within their sphere of control to ensure their place of practice meets these requirements, they will likely be compliant with the Core Duty. The detailed 'Equality Rules' do not apply to employed barristers, so they would be expected to reflect on how the new Core Duty is relevant to their legal practice. We expect to produce additional guidance outlining how employed barristers might act in a way that is consistent with the 'equality outcomes', in so far as it is within their sphere of control.

We will develop guidance to support employed barristers and self-employed barristers to meet this duty and will work with the profession to support them to meet the proposed Core Duty and the Equality Rules. Where we identify through our supervision activity that sufficient steps are not taken by barristers to meet these duties and requirements, we would work constructively with them to support compliance. Enforcement action will likely be



reserved for more serious breaches or where there is a failure to co-operate with the regulator.

### **Do any other regulators take this approach?**

We are in line with other legal regulators such as the Solicitors Regulation Authority (SRA), whose Principle Six states 'you must act in a way that encourages equality, diversity, and inclusion'. And if a barrister wants to "take silk" by becoming a King's Counsel, King's Counsel Appointments will assess applicants against their Competency D which requires that a candidate "demonstrates an understanding of diversity and cultural issues, respects the needs and cultural wishes of others and is proactive in addressing the needs of people from all backgrounds and promoting diversity and equality of opportunity".

### **Why move to outcomes-focused regulation?**

We know that chambers come in all shapes and sizes and outcomes-focused regulation gives chambers the discretion to pursue outcomes in ways that are appropriate to the size, scale, specialism and the particular challenges that a chambers may face.

### **Diversity is defined as, "including, but not limited to, characteristics covered by the Equality Act and socio-economic background". What is "included" in diversity that is not part of the Equality Act and socio-economic background?**

We are exploring through the consultation, other groups who face challenges with access to and representation within the profession, for example people who have been in care (care experienced) and those with caring responsibilities (carers).

### **How will protected beliefs under the Equality Act that conflict with the proactive duty be considered? If a barrister holds a protected belief that (for example) mothers should not work while they have young children, they are obviously under a duty not to discriminate against any parent. What if the barrister is a member of a group which supports & encourages mothers not to work? Will this be a breach of the core duty?**

The core duty is intended only to impact a barrister's practice. Actions or statements in non-professional life will continue to be covered under the other core-duties and our approach to them was set out [in our guidance](#) last year.

### **What do you mean by 'promote an inclusive culture' and does this inadvertently exclude those who hold unpopular or unfashionable views?**

By 'promote an inclusive culture', we mean barristers must manage their practice in such a way that creates a respectful environment that is inclusive of diverse points of view and



allows diverse identities to be affirmed. It includes a requirement to tackle prejudice and promote understanding where it relates to roles that they take on, for example as pupil supervisors, or in recruitment.

### **Are these rules coercive, illiberal and dangerous?**

Quite the contrary. This is liberal. The purpose of these rules is to ensure that chambers are open and inclusive to barristers and pupils of all views and all backgrounds.

### **Do these proposals undermine public confidence in under-represented groups?**

We do not believe that our proposals undermine public confidence in under-represented groups. However, understanding the equality impact of our proposals is part of the purpose of the consultation, which will go wider than the profession.

We would like to hear from a wide range of stakeholders, particularly organisations representing consumers, as to whether our proposals have any unintended adverse impact. If there is evidence that this would have an adverse impact, then we will revise these rules in light of the evidence.

### **Do the proposed rules require adherence to the regulator's views?**

This is not an ideological initiative. We're not advocating a particular set of views. The underlying principle here is that barristers of all views and all backgrounds should be able to thrive in chambers and that merit should determine the success of a barrister's career. A requirement to advance equality of opportunity is not a lowering of standards. We believe the profession shares our objective of promoting diversity. That's what we're seeking to do. We're seeking, through these proposals, to help ensure that chambers are places in which barristers and pupils of all backgrounds and views are able to thrive.

### **Is this a tick-box exercise?**

This is the opposite of a tick-box exercise. The virtue of outcomes-based regulation is that it enables chambers to take an approach that is appropriate for its own scale, size, circumstances, challenges.