

## Rules C110-C112 - Equality and diversity

## Rules

**rC110**

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

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

**Equality and Diversity Officer**

- .a *chambers* or *BSB entity* has at least one *Equality and Diversity Officer*;

**Training**

- .b removed.
- .c save in exceptional circumstances, every member of all selection panels must be trained in fair recruitment and selection processes;

**Fair and objective criteria**

- .d recruitment and selection processes use objective and fair criteria;

**Equality monitoring**

- .e your *chambers* or *BSB entity*:
  - .i conducts a regular review of its policy on equality and diversity and of its implementation in order to ensure that it complies with the requirements of this Rule rC110; and
  - .ii takes any appropriate remedial action identified in the light of that review;
- .f subject to Rule rC110.3.h *chambers* or *BSB entity* regularly reviews:
  - .i the number and percentages of its *workforce* from different groups; and
  - .ii applications to become a member of its *workforce*; and
  - .iii in the case of *chambers*, the *allocation of unassigned work*,
- .g the reviews referred to in Rule rC110.3.f above include:
  - .i collecting and analysing data broken down by race, disability and gender;
  - .ii investigating the reasons for any disparities in that data; and
  - .iii taking appropriate remedial action;
- .h the requirement to collect the information referred to in Rule C110.3.g does not apply to the extent that the people referred to in Rule rC110.3.f.i and Rule rC110.3.f.ii refuse to disclose it.

**Fair access to work**

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

**Harassment**

- .j *chambers* or *BSB entity* has a written anti-*harassment* policy which, as a minimum:
  - .i states that *harassment* will not be tolerated or condoned and that *managers*, employees, members of *chambers*, *pupils* and others temporarily in your *chambers* or *BSB entity* such as mini-pupils have a right to complain if it occurs;

- .ii sets out how the policy will be communicated;
- .iii sets out the procedure for dealing with *complaints of harassment*;

#### Parental leave

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

#### Flexible working

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

#### Reasonable adjustments policy

- .m *chambers* or *BSB entity* has a reasonable adjustments policy aimed at supporting disabled *clients*, its *workforce* and others including temporary visitors;

#### Appointment of Diversity Data Officer

- .n *chambers* or *BSB entity* has a Diversity Data Officer;
- .o *chambers* or *BSB entity* must provide the name and contact details of the Diversity Data Officer to the *Bar Standards Board* and must notify the *Bar Standards Board* of any change to the identity of the Diversity Data Officer, as soon as reasonably practicable;

#### Responsibilities of Diversity Data Officer

- .p The Diversity Data Officer shall comply with the requirements in relation to the collection, processing and publication of *diversity data* set out in the paragraphs rC110.3.q to .t below;

#### Collection and publication of diversity data

- .q The Diversity Data Officer shall invite members of the *workforce* to provide *diversity data* in respect of themselves to the Diversity Data Officer using the model questionnaire in Section 7 of the BSB's Supporting Information on the BSB Handbook Equality Rules, which is available on the BSB's website;
- .r The Diversity Data Officer shall ensure that such data is anonymised and that an accurate and updated summary of it is published on *chambers'* or *BSB entity's* website every three years. If *chambers* or the *BSB entity* does not have a website, the Diversity Data Officer shall make such data available to the public on request;
- .s The published summary of anonymised data shall:
  - .i removed;
  - .ii exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent; and
  - .iii subject to the foregoing, include anonymised data in relation to each characteristic, categorised by reference to the job title and seniority of the *workforce*.

.t The Diversity Data Officer shall:

- .i ensure that *chambers* or *BSB entity* has in place a written policy statement on the collection, publication, retention and destruction of *diversity data* which shall include an explanation that the provision of *diversity data* is voluntary;
- .ii notify the *workforce* of the contents of the written policy statement; and
- .iii ask for explicit consent from the *workforce* to the provision and processing of their *diversity data* in accordance with the written policy statement and these rules, in advance of collecting their *diversity data*.

#### rC111

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

- .1 the arrangements in place in your *chambers* or *BSB entity* for the management of *chambers* or the *BSB entity*; and
- .2 any role which you play in those arrangements.

#### rC112

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

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

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### Guidance to Rules C110-C112

#### Guidance

#### gC140

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

#### gC141

In relation to Rule rC110, if you are a Head of *chambers* or a *HOLP* it is likely to be reasonable for you to ensure that you have the policies required by Rule rC110, that an *Equality and Diversity Officer* is appointed to monitor compliance, and that any breaches are appropriately punished. If you are a member of a *chambers* you are expected to use the means available to you under your constitution to take reasonable steps to ensure there are policies and that they are enforced. If you are a *manager* of a *BSB entity*, you are expected to take reasonable steps to ensure that there are policies and that they are enforced.

#### gC142

For the purpose of Rule rC110 training means any course of study covering all the following areas:

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

#### gC143

Training should ideally be undertaken via classroom sessions. However, it is also permissible for training to be undertaken in the

following ways: online sessions, private study of relevant materials such as the Bar Council's Fair Recruitment Guide and completion of CPD covering fair recruitment and selection processes.

#### gC144

The purpose of Rule rC110.3.d is to ensure that applicants with relevant characteristics are not refused employment because of such characteristics. In order to ensure compliance with this rule, therefore, it is anticipated that the *Equality and Diversity Officer* will compile and retain data about the relevant characteristics of all applicants for the purposes of reviewing the data in order to see whether there are any apparent disparities in recruitment.

#### gC145

For the purpose of Rule rC110 "regular review", means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that "regularly" should mean annually. In respect of managers of a *BSB entity* or tenants, it is likely to be considered reasonable that "regularly" should mean every three years unless the numbers change to such a degree as to make more frequent monitoring appropriate.

#### gC146

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

#### gC147

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

#### gC148

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

#### gC149

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

#### gC150

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

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

#### gC151

These rules are supplemented by the BSB's Supporting Information on the BSB Handbook Equality Rules ("the Supporting Information") which is available on the BSB's website. These describe the legal and regulatory requirements relating to equality and diversity and provide guidance on how they should be applied in *chambers* and in *BSB entities*. If you are a *self-employed barrister*, a *BSB entity*, or a *manager* of a *BSB entity*, you should seek to comply with the Supporting Information as well as with the rules as set out above.

**gC152**

The Supporting Information is also relevant to all *pupil supervisors* and *AETOs*. *AETOs* will be expected to show how they comply with the Supporting Information as a condition of authorisation.

**gC153**

Although the Supporting Information does not apply directly to *BSB authorised persons* working as *employed barristers (non-authorised bodies)* or *employed barristers (authorised non-BSB body)*, they provide helpful guidance which you are encouraged to take into account in your practice.

**Rules C113-C118 - Pupillage funding****Rules****Funding****rC113**

The members of a set of *chambers* or the *BSB entity* must pay to each non-practising *pupil* (as appropriate), by the end of each month of the non-practising period of their *pupillage* no less than:

- .1 the *specified amount*; and
- .2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:
  - .3 travel for the purposes of their *pupillage* during that month; and
  - .4 attendance during that month at courses which they are required to attend as part of their *pupillage*.

**rC114**

The members of a set of *chambers*, or the *BSB entity*, must pay to each practising *pupil* by the end of each month of the practising period of their *pupillage* no less than:

- .1 the *specified amount*; plus
- .2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:
  - .a travel for the purposes of their *pupillage* during that month; and
  - .b attendance during that month at courses which they are required to attend as part of their *pupillage*; less
- c such amount, if any, as the *pupil* may receive during that month from their *practice* as a *barrister*; and less
- .d such amounts, if any, as the *pupil* may have received during the preceding months of their practising *pupillage* from their *practice* as a *barrister*, save to the extent that the amount paid to the *pupil* in respect of any such month was less than the total of the sums provided for in sub-paragraphs rC114.2.a and .b above.

**rC115**

The members of a set of *chambers*, or the *BSB entity*, may not seek or accept repayment from a *chambers pupil* or an *entity pupil* of any of the sums required to be paid under Rules rC113 and rC114 above, whether before or after they cease to be a *chambers pupil* or an *entity pupil*, save in the case of misconduct on their part.

**rC116**

If you are a *self-employed barrister*, you must pay any *chambers pupil* for any work done for you which because of its value to you warrants payment, unless the *pupil* is receiving an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work.

**Application****rC117**

Removed.