



## New Equality Provisions of the Code of Conduct

### Frequently Asked Questions

**1. How might chambers approach the monitoring of unassigned work?**

Chambers should consider keeping a database of work allocation, as recommended in section 6, para 17 of the guidelines. Monitoring data will need to be kept in a form that allows EDOs to identify individuals for work allocation purposes and identify any patterns or discrepancies. Fair allocation means that a barrister's knowledge and level of expertise is taken into account, and that work is allocated for justifiable reasons. It does not mean blindly equal allocation of work. Devilled work should also go through the clerks' room to ensure that it too is being allocated fairly.

**2. Do chambers have to publish monitoring information on unassigned work?**

No, requirement 408.2(e) covers the monitoring of allocation of unassigned work only.

**3. Will questionnaires be sent to all chambers during the Chambers Monitoring exercise in 2013?**

A timetable for the 2013 Chambers Monitoring exercise has not yet been set, but it is likely that questionnaires will be sent to all chambers.

**4. Are sole practitioners covered by the E&D rules for the self-employed Bar (para 408 – 409)?**

No, only the fundamental principle at para 305.1 applies to sole practitioners. The requirements at 408 and 409 do not apply to sole practitioners.

**5. If all members of chambers answer 'prefer not to say' to every question on the diversity monitoring questionnaire, does this data still have to be published?**

Yes. The requirement is to undertake the data collection and publication exercise, irrespective of the results.

**6. How has the new fundamental principle changed from what was previously in the Code of Conduct at 305.1?**

The fundamental principle now applies to a barrister in the course of his or her professional practice as opposed to applying generally in relation to any other person. The principle clearly prohibits unlawful discrimination as opposed to discrimination generally. The principle has also been updated to include the protected characteristics set out in the Equality Act 2010.

**7. Where can I get fair recruitment training?**

Fair recruitment training may be undertaken through:

- Private study of the Bar Council's Fair Recruitment Guide
- Classroom sessions
- Online courses

Details on appropriate online or classroom courses may be obtained from the Bar Council Equality and Diversity Team or email:

[ACampbell@BarCouncil.org.uk](mailto:ACampbell@BarCouncil.org.uk) or telephone 0207 611 1321.

**8. What does the BSB consider "recent" in terms of the training requirement?**

Recent for the purposes of rules 408.2 (b) & (c) is training undertaken in the last 5 years before the selection panel sitting.

**9. What is a "flat rate"?**

A flat rate system is one where charges are made on a pre-defined sum as opposed to on a percentage rate of earnings.

**10. What if someone in chambers does not want to provide their diversity data?**

Provision of equality data is entirely voluntary, if an individual does not feel comfortable providing the data they do not have to provide it.

**11. Who should draft the equality policy and action plan?**

The rules do not require a particular person to draft the policy and action plan but it is suggested in the Guidelines at section 4, that chambers' EDO ensures they are developed. All members of chambers workforce should contribute to the development of both documents.

**12. My chambers does not have a website – how do we publish our diversity data?**

The rules provide that where a chambers does not have a website, it is sufficient for chambers to ensure that diversity data is available to the public on request [408.2(p)].

### **13. What is remedial action?**

Remedial action is defined in the Code at 1001. as “*Any action aimed at removing or reducing the disadvantage experienced by particular groups*”. For example monitoring reveals that chambers has an underrepresentation of female members. An example of remedial action might be for female members to attend pupillage recruitment events as role models and to provide information.

### **14. How often does diversity data need to be reviewed?**

In respect of data on pupils, it is suggested that data be reviewed annually. As regards data on tenants data should be reviewed every 3 years.

### **15. How will the BSB monitor compliance with the rules?**

Monitoring of compliance with the new rules will be undertaken through the BSB Chambers Monitoring Programme and as such will be conducted by the BSB’s Quality Assurance team. The BSB is currently reviewing its Chambers Monitoring Programme in order to maximise compliance with the LSB’s regulatory standards and specifically to ensure that supervision is appropriately aligned to risk. The first step in supervision will be to identify levels of compliance and non-compliance through sending a monitoring questionnaire to all chambers to ask that they self-assess compliance with the new rules. This will commence in mid 2013. Where non-compliance is identified an incremental approach to addressing it will be adopted. In the first instance the BSB will assist non-compliant chambers to meet their obligations and put in place appropriate systems for data collection. The first step would be to make a request for further information. The extent and nature of the non-compliance will be assessed and steps will be taken to work with chambers to advise them on this. Attempts will be made to agree an “action plan” with the chambers to achieve compliance. Only those chambers who fail to agree and implement an action plan will be subject to enforcement action.

The new rules allow for administrative rather than disciplinary penalties, which means that warnings and/or fines, may be imposed. Breaches of these rules will only amount to professional misconduct if the breach is serious due to the nature and extent of the breach or combination with other breaches of the Code.

### **16. If we pay rent as a percentage of receipts – will chambers be required to waive that rental payment for 6 months?**

No, the requirement relates to chambers operating a flat rate rental structure only.

**17. If I undertake work to keep my hand in during my time on rent free paternity leave will I have to pay rent on anything I earn?**

No, but you will need to negotiate with chambers how much and what type of work they will allow you to do during this time. Informal working arrangements to keep your hand in during parental leave do not affect a member's entitlement to a six month rent free period provided that the head of Chambers is kept informed of the arrangements and is satisfied that the level of work being undertaken does not constitute a return to practice.

**18. If someone attends a pupillage interview in a wheelchair are we allowed to ask them how they intend to get to Court given that many Courts are inaccessible?**

Questions about the health of an applicant may not be asked before pupillage is offered. However a question about the disability of a pupil may be asked in interview if the question is asked with the aim of establishing whether s/he will be able to carry out a function intrinsic to the role (e.g. getting to court, if regular court appearances are intrinsic to the role).

**19. How do you make a listed building accessible?**

'Easy Access to Historic Buildings' booklet from English Heritage:

<http://www.english-heritage.org.uk/content/publications/publicationsNew/guidelines-standards/easy-access-to-historic-buildings/eheasyaccess2004.pdf>

This booklet is from 2004, but is comprehensive. In summary, if disability access provisions are treated as additions which respect existing historic architecture, rather than alterations, and skilfully integrated, they need have no more effect on historic buildings than sympathetically designed modern services, health & safety and fire precautions. Crucially, all buildings are different and it is best to speak to the local planning authority before knocking down any walls!

The Bar Council has produced a document containing guidance about making chambers accessible which can be found here:

[http://www.barcouncil.org.uk/media/43938/disability\\_access\\_making\\_chambers\\_accessible.pdf](http://www.barcouncil.org.uk/media/43938/disability_access_making_chambers_accessible.pdf)

**20. Why is there no sample flexible working or equal opportunity policy in the Guidelines whilst there is a sample reasonable adjustments and anti-harassment policy?**

The Guidelines do not contain a model E&D or FW policy as such policies will need to be tailored to the specific needs of each chambers, addressing the particular equality issues facing that chambers and setting out the aims and objectives of chambers in relation to equality. An E&D policy should cover all the areas set out in Section 3 of the Guidelines to the rules. As regards reasonable adjustments and anti-harassment measures in chambers, appropriate provisions are likely to be broadly similar across most chambers and for this reason sample policies have been drafted for chambers to adapt. These may be found at section 12 of the BSB Guidelines.

**21. Can chambers' Equality and Diversity Officer (EDO) be the same person as the Diversity Data Officer (DDO)?**

Yes, and in many chambers it is likely that these two positions will be held by the same person.

**22. Does headcount diversity data collected on all members of the chambers' workforce need to be analysed in the same way as the race, disability and gender data collected on numbers of barristers/applications/unassigned work?**

There is no requirement for headcount diversity data (other than race, gender and disability data) to be analysed or for chambers to take remedial action, but chambers are encouraged to do this as a matter of best practice.

**23. Is "fair and appropriate" training by way of accredited training courses? Or will any courses which meet the requirements be acceptable?**

Courses will be deemed acceptable by the BSB as long as they cover the following areas: fair and effective selection and unconscious bias, selection criteria, short-listing and interviewing skills, assessment and making a selection decision; monitoring and evaluation.

You can find details of Recruitment and Selection courses which have been cpd accredited on the Bar Council website.

**24. Does the BSB hold a list of approved providers for the fair recruitment training courses?**

The BSB does not hold lists of approved providers for fair recruitment training courses however the Bar Council has details of appropriate courses. Further details can be obtained by contacting Angela Campbell, 0207 611 1321, [ACampbell@BarCouncil.org.uk](mailto:ACampbell@BarCouncil.org.uk)

**25. Do the requirements include gathering information on transgender?**

Following advice from trans equality organisations and data protection specialists the BSB has decided against requirement data collection in this

area. The rules therefore do not require the collection or publication of data on transgender. The BSB plans to conduct qualitative research into the experiences of trans barristers in the future separately to the data collection exercise.

**26. Can a DDO be a member of staff?**

Yes. The DDO role is a largely administrative one, requiring the holder to undertake tasks such as gathering data, ensuring monitoring forms are disseminated and ensuring relevant data is published. However if the DDO/EDO are one and the same person, that person should be a barrister.

**27. Can an EDO be a member of staff?**

The equality and diversity officer (EDO) should be a barrister, ideally a senior member of chambers as the role includes the provision of advice on equality issues to those in chambers.

**28. It was suggested during the webinar that an example of remedial action might be that female members of chambers attend recruitment events to act as a role model. Would this not place an unfair burden on female members of chambers where there a small number of female tenants, therefore discriminating against such members?**

Any steps taken to implement remedial action should be carefully considered to ensure that they do not impact unfairly on any one group in chambers.

**29. How do you determine socio economic status?**

The questionnaire at Annex C of the BSB's Data Protection Guidance contains the relevant question to ask members of your workforce to determine socio-economic status. The questions cover whether or not the individual was the first member of their family to attend university and whether or not they attended private school.

**30. What is expected of a Sole Practitioner?**

Sole practitioners are only covered by the fundamental principle. The rules at 408.2 do not apply.

**31. What is "unassigned work"?**

Unassigned work" is work that comes into chambers that is not assigned to a named person. Unassigned work may come into chambers by post, email, or may come in the form of a phone call from an instructing solicitor (or in public access cases, directly from a client). Any matter coming into chambers, by any means, that does not have a named individual assigned to it, is unassigned work.

If your question is not answered here or in the guidelines document, please contact Angela Campbell, Equality and Diversity Officer on 0207 611 1321 or [ACampbell@BarCouncil.org.uk](mailto:ACampbell@BarCouncil.org.uk).