

New Equality Rules of the Code of Conduct

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A brief history....

- **1995** – Best practice “Equality Code for the Bar” developed
- **2004** – E&D Code updated to reflect new equality law
- **2010** – Equality Act: E&D Code to be mandatory rules
- **November 2010** – Public & Bar wide consultation on draft E&D Rules
- **March 2011** – Consultation closed
- **March 2012** – BSB Board approved rules & guidance
- **April 2012** – Finalised rules submitted to LSB

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The new rules....

- Will be inserted into the Code of Conduct at paragraphs 305 & 408
- Are supported by:
 - BSB Guidelines on Equality Provisions of the Code of Conduct – “The Guidelines”
 - BSB Guidance on Data Collection Rules “Data Collection Guidance”

Both available to download from BSB Website

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Fundamental principle of non-discrimination

- Para.305.1:

“A barrister must not, in his professional practice, discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief or pregnancy and maternity”.

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Fundamental principle – key points

- *Updates core principle set out in previous code to reflect new protected characteristics set out in the Equality Act*
- *Applies to all barristers employed & self-employed*
- *Applies to all barristers in course of their “professional practice”*

Rules for the self-employed bar

– Rules set out at paragraph 408:

“A self employed barrister must take reasonable steps.....”

– Rules place duty on **all** self-employed barristers as opposed to Heads of Chambers

– Reasonable Steps - What is “reasonable”?

- Detailed guidance in the BSB Guidelines
- Set out at para 409 of the Code and discussed later in this presentation

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408.1 – Policy & Action Plan

- *“A self employed barrister must take reasonable steps to ensure that in relation to their chambers:

a) there is in force a written statement of policy on equality and diversity; and

b) there is in force a written plan implementing that policy”*

Policy & Action Plan

- Chambers must have an E&D policy and action plan
- Guidelines set out what is required for both
- E&D policy must cover:
 - Recruitment and selection
 - Fair access to work and the allocation of unassigned work
 - Equality monitoring
 - Complaints and grievances.
- Actions should be “SMART”
- Guidelines do not contain model E&D policies

408.2 – Individual Duty

- *“A self employed barrister must take reasonable steps to ensure that their chambers complies with the following requirements”:*
- Followed by requirements 408.2(a) – (t)

408.2(a) – Chambers EDO

- *“Their chambers must have at least one Equality and Diversity Officer”*

E&D Officer

- Must have at least one EDO
- EDO should ideally be:
 - Senior member of chambers
 - Equality trained
- Suggested responsibilities of EDO set out in Guidelines – Section 4
- EDO may be the same person as the Diversity Data Officer

408.2(b) and (c) – Equality Training

- *“(b) From 1 January 2013, the member with lead responsibility for any committee or panel responsible for the selection of members of chambers, pupils, clerks or assessed mini-pupils and at least one member of the selection panel, who may be the same person, must have received recent and appropriate training in fair recruitment and selection processes, except in unforeseen and exceptional circumstances.*
- *(c) From 1 July 2014, save in exceptional circumstances, every member of all selection panels involved in the recruitment of members, pupils, clerks and assessed mini-pupils must be trained in fair recruitment and selection processes”.*

Equality Training

- By 01/01/13 - Member with **lead responsibility** for selection panels and at least one member of the panel must have had **recent and appropriate** fair recruitment training.
- 01/07/14 – **All** members of selection panels must have been trained in fair recruitment

Appropriate Training

- 408.1(b) – member of selection panel and member with lead responsibility **may be one and the same person**
- “Recent” = in the last 5 years
- Appropriate:
 - Must cover areas set out in definitions to the Code (s.1001)
 - Information on courses from Bar Council E&D team
 - May be an online or classroom course
 - May be private study of Bar Council’s Fair Recruitment Guide

Training for Lead Panel Members

- Training for **lead member** should cover:
 - Fair and effective selection & unconscious bias
 - Selection criteria & assessment methods
 - Attraction and advertising
 - Application processes
 - Short listing skills
 - Interviewing skills
 - Assessment and selection decision making
 - Monitoring and evaluation
- The above are all covered in the Bar Council's Fair Recruitment Guide

Training for other panel members

- Training for other members should cover at least:
 - Fair and effective selection
 - Unconscious bias
 - Short listing
 - Interviewing
 - Assessment and making selection decisions
- Such training may be undertaken through private study of Fair Recruitment Guide

- Training rules apply to selection panels dealing with recruitment of:
 - Pupils
 - Members
 - Clerks
 - Assessed mini-pupils
- Un-assessed mini-pupils are not covered by these rules

408.2(d) - Fair & Objective Criteria

- 408.2 (d): *“Chambers’ recruitment and selection processes must use objective and fair criteria”.*
- Fair criteria should:
 - Not be subjective
 - Promote a consistent approach
 - Reduce opportunities for stereotyping
- Higher weightings should be given to those criteria to which greater importance is attached

Monitoring - 408.2(e)

“Their chambers must regularly review:

- (i) the number and percentages of staff, barristers, pupils and assessed mini-pupils from different groups;*
- (ii) applications for assessed mini-pupillage, pupillage, staff and membership of chambers;*
- (iii) the allocation of unassigned work.*

This review must 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”.*

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Monitoring Requirements

- Chambers must regularly review:
 - Numbers and percentages of barristers, pupils and assessed mini-pupils
 - Applications for **assessed** mini-pupillage, pupillage, staff and chambers' membership
 - Allocation of **unassigned** work
- Chambers must gather and analyse data on race, gender and disability as a minimum
- “Regularly”
 - pupillage data = every three years
 - Other data = annually

Investigating Disparities

- 408.2(e) – includes requirement to investigate any disparities and take remedial action.
- Investigating disparities e.g.:
 - Under/over-representation of groups
 - Absence of groups
 - Success rates of groups
 - Over/under allocation of work to particular groups

Remedial Action

- Remedial Action

“Any action aimed at removing or reducing the disadvantage experienced by particular groups” (Definitions - Code of Conduct)

408.2 (l) – (t) Headcount monitoring

- Chambers must have a Diversity Data Officer (DDO) – who may be the same person as the Equality and Diversity Officer
- Chambers must **collect and publish** headcount data for chambers' workforce on:
 - Race
 - Gender
 - Disability
 - Sexual orientation – **not published**
 - Religion/belief – **not published**
 - Age
 - Socio economic status
 - Caring responsibilities

Headcount Monitoring

- “Workforce” – includes barristers, pupils, clerks and staff
- Publish – online or in hard copy provided on request
- *Publication of headcount data (excluding religion/belief & sexual orientation) required by 31/12/12 and thereafter every three years*
- Chambers must use questionnaire provided - Annex C BSB Data Collection Guidance
- Presentation of data – examples in BSB Guidance

Warning!! Chambers must not publish data where there is a risk that individuals could be identified unless there is consent

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408.2(f) - Fair Access to Work

“The affairs of their chambers must be conducted in a manner which is fair and equitable for all members of chambers and pupils. This includes, but is not limited to, the fair distribution of work amongst pupils and members of chambers”.

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Fair Access to Work

- Rule carried over from previous code requirement (para. 404.2)
- Fair access to work includes fair distribution of work
- Acting on discriminatory instructions is prohibited (e.g. an IS or client request for a male or white barrister)
- Chambers must ensure marketing/networking activities are inclusive.

Harassment

- Harassment:

Any form of unwanted conduct relating to age, disability, gender re-assignment, race, religion/belief, sex or sexual orientation which has the aim or effect of violating a person's dignity or which creates an intimidating, hostile, degrading, humiliating or offensive environment.

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408.2(g) - Anti- Harassment Policy

408.2 (g) “Their chambers must have a written anti-harassment policy which must:

- (i) state that harassment will not be tolerated or condoned and that employees, members of chambers, pupils and others temporarily in chambers such as mini-pupils have a right to complain if it occurs;*
- (ii) set out how the policy will be communicated;*
- (iii) set out the procedure for dealing with complaints of harassment”.*

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Anti-Harassment Policy

- Anti –Harassment policy should be communicated to **all** members of chambers workforce including staff
- Harassment should be treated as a disciplinary offence
- Sample Anti-Harassment Policy in Guidelines – section 12

Parental Leave Rules

- Parental Leave (PL) is leave taken by a **primary carer** following birth/adoption.
- Self-employed Bar have no access to employment law provisions relating to parental leave
- Parent may be biological or adoptive and of either sex
- Primary carer = main carer

408.2(h) - Parental Leave Rules

408.2(h): *“Their chambers must have a parental and adoption leave policy which covers:*

- (i) The right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave;*
- (ii) The extent to which a member of chambers is or is not required to contribute to chambers’ rent and expenses during parental leave. This includes, but is not limited to, the method of calculation of any waiver, reduction or reimbursement of chambers’ rent and expenses during parental leave;*
- (iii) The procedure for dealing with grievances under the policy;*
- (iv) Chambers’ commitment to review regularly the effectiveness of the policy”.*

Parental Leave Policy

- Requirement to have PL policy – sample policy in the Guidelines section 12
- “Expenses” may include: mortgage payments, clerks fees paid on percentage basis, interest on investments etc

408.2(i) - Rent Relief Rule

408.2 (i): “Where rent is paid on a flat rate basis, their chambers must offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers’ rent”.

Rental Payments during Parental Leave

- Where rent is paid on **flat rate** basis, chambers must offer members taking PL a minimum of 6 months' **free of rent**
- “Flat rate” = fixed sum regular rental payment (as opposed to rent calculated as percentage of receipts)
- Chambers are encouraged to offer members more than 6 months' rent relief
- Expenses are **not** covered by this rule

408.2(j) - Flexible Working Policy

- *408.2 (j): “Their chambers must have a flexible working policy which covers the right of a member of chambers to take a career break, to work part time, to work flexible hours or to work from home to enable them to manage their family responsibilities or disability and remain in practice”.*

Flexible Working Policy

- No sample policy in the Guidelines as chambers will need to structure policy based on individual position but consider:
 - Pro rating of financial contributions (e.g. rent) for part time workers
 - Including those on flexible working arrangements in networking/marketing activities
 - Negotiating terms of the policy with those who may be potentially affected.

Reasonable Adjustments

- What is a reasonable adjustment? (RA):

Where a provision, criterion, practice, physical feature or lack of auxiliary aid puts a disabled person at substantial disadvantage in comparison to those who are not disabled reasonable steps must be taken to avoid the disadvantage.

- What is **reasonable**? Depends on:
 - Effectiveness of RA in preventing disadvantage
 - Practicability of making the RA
 - Cost of the RA and the extent of any disruption making the adjustment would cause
 - Extent of chambers' financial or other resources
- Examples of RAs: adapted telephone, wheelchair ramp, hearing loop, providing documents in Braille.

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408.2(k) - Reasonable Adjustments Policy

408.2(k): “Their chambers must have a reasonable adjustments policy aimed at supporting disabled clients, barristers and visitors to chambers”.

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Reasonable Adjustments Policy

- Equality Act 2010 places a legal duty on barristers to make RAs.
- The cost of making RA cannot be passed to disabled person
- The RA policy should be reviewed every 2 years
- Sample RA policy in Guidelines – section 12

Definitions, compliance and support for the profession

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“Reasonable Steps”

- E&D rules require that individual barristers take “reasonable steps” - **What is reasonable?**

- Paragraph 409 of the Code:

“For the purposes of rule 408, the steps which it is reasonable for a barrister to take will depend on all the circumstances, which include, but are not limited to:

(a) the arrangements in place in their chambers for the management of chambers; and

(b) any role which they play in those arrangements”.

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What is reasonable for Heads of Chambers?

- Person with overall responsibility (e.g. Head of Chambers or Management Committee Chair) should:
 - Ensure relevant policies and action plan are in place
 - Ensure chambers appoints an EDO and a DDO
 - Ensure monitoring is carried out
 - Ensure relevant training is undertaken by selection panel members

What is reasonable for those responsible for pupils?

- Pupil supervisors – have greater responsibility than others for ensuring their pupils are treated fairly
- Individuals with overall responsibility for pupillage - have greater responsibility for ensuring rules affecting pupils are implemented e.g. monitoring, fair access to work, selection panel training rules.

What is reasonable for EDOs?

- Recommended duties for EDOs are included in BSB Guidelines
- Reasonable to expect EDOs to ensure:
 - E&D policy is produced
 - Review of chambers' equality related policies is undertaken
 - E&D training is provided
 - Advice is provided on request
 - Monitoring data is gathered

What is reasonable for junior members/pupils?

- Reasonable steps for junior members less onerous than for senior members
- Junior members/pupils could reasonably be expected to draw senior members' attention to individuals who flout the rules *if chambers has the mechanisms in place for them to be able to do so*
- Reasonable to expect junior members to agree E&D related policies when discussed at chambers' meetings or vote against non-compliant policies

Support for the profession

- Published on BSB website:
 - BSB Guidelines
 - BSB Data Protection Guidance
 - Frequently Asked Questions on the rules
 - This webinar
- Can also contact:
 - Bar Council Ethics helpline - 020 7611 1307
 - Bar Council Equality helpline - 020 7611 1310

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Supervision and enforcement

- Compliance monitored through BSB chambers' monitoring programme
 - Monitoring questionnaire sent to chambers
 - Non-compliant chambers provided with BSB support
- Enforcement
 - Persistent non-compliance – enforcement action
 - Administrative penalty (e.g. warnings/fines) rather than disciplinary
 - Will be considered professional misconduct if breach is serious (due to nature/extent of breach or if in combination with other Code breaches)

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Timeline

- **July 2012** – Rules approved by LSB
- **August 2012** - Rules and BSB Guidelines published
- **July – September 2012** - Communication of Rules to profession
- **September 2012** – Rules come into force
- **December 2012** – Equality data published by chambers
- **January 2013** – Lead selection panel member trained
- **1st Quarter 2013** – Chambers’ monitoring commences
- **July 2014** – All selection panel members to be trained

Questions for the panel?

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