

**The Proposed Amendments to the Equality Rules:  
Consultation response by the Chancery Bar Association**

1. The Chancery Bar Association is one of the longest established Bar Associations and represents the interests of some 1,500 members handling the full breadth of Chancery legal work at all levels of seniority, both in London and throughout England and Wales. It is recognised by the Bar Council as a Specialist Bar Association. Chancery work is that which was traditionally dealt with by the Chancery Division of the High Court of Justice but, from 2 October 2017 has been dealt with principally by the Business and Property Courts (“B&PCs”), which sit in London, and in regional centres outside London. The B&PCs attract high profile, complex and, increasingly, international disputes. Our members offer specialist expertise in advocacy, mediation and advisory work including across the whole spectrum of company, financial, property and business law. As advocates, members are instructed in all courts in England and Wales, as well as abroad. Full membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work, but there are also academic and overseas members whose teaching, research or practice consists primarily of Chancery work.
2. The Chancery Bar Association draws members from a wide variety of sets of chambers. Whilst the majority of our members work in specialist Chancery sets, some of which are very small, and others larger, we also represent members on every circuit in England and Wales, some of whom are members of general common law chambers.
3. The Chancery Bar Association has long had an EDI sub-committee, which in recent years has regularly collaborated with its counterparts from the Commercial Bar Association and the Technology and Construction Bar Association.
4. The Chancery Bar Association is acutely aware of the real challenges with retention and progression at the Chancery Bar. For instance, there are some troubling disparities between the earnings of men and women, and white and non-white barristers, even in the early years of practice. The Chancery Bar Association is not afraid of having a hard look at the problems that exist within our practice areas. Our work has given rise to two ground-breaking, and public, reports [Voices of Women](#) and [Black Inclusion Group](#) detailing the experience of women and Black people, respectively, at the Chancery Bar.
5. Beyond identifying problems, the Chancery Bar Association is dedicated to taking active steps to make real change. To that end some of our recent work includes –
  - a. In respect of outreach and recruitment –

- i. The creation of a new, free, tier of student membership allowing access to Chancery-specific content to younger people who have yet to choose a specialism.
  - ii. The creation of 10 short [videos](#) aimed at school-aged children in the hopes of demonstrating the possibility of a career at the Chancery Bar and de-mystifying the practice areas that make up the Chancery Bar.
  - iii. The creation of a bursary scheme with the Inns of Court College of Advocacy (ICCA) to support students on its Bar Course. The bursary is aimed at those who have a demonstrable commitment to Chancery work; significant financial difficulty taking up a place on the ICCA Bar Course without a bursary; and a background that is under-represented at the Bar generally, or at the Chancery Bar in particular.
  - iv. An annual “Women and the Chancery Bar” information event for students.
  - v. Cross-SBA webinars providing application advice and CV review.
  - vi. Attendance at the Bar Council’s Pupillage Fair.
- b. In respect of culture, retention and progression –
- i. The creation and amplification of [The Fairness Charter](#): This was created in response to the enormous amount of work done in relation to the Voices of Women report. The Fairness Charter contains 12 practical suggestions which we believe will assist chambers in seeking to achieve fairness in work allocation, career development, marketing and earnings for female barristers in a meaningful way.
  - ii. Menopause Awareness: Following a hugely inspirational webinar the Chancery Bar Association, together with Brie Stevens-Hoare KC and Lyndsey De Mestre KC have hosted a series of Menopause Cafés. These are informal social events, open to all ages and stages, that provide time and space for those to attend to have relaxed, friendly, supportive, frank and non-judgmental conversations, to share experiences, ask questions and break down stigma and misconceptions for the benefit of those navigating, or anticipating, any stages of the menopause whilst working at and with the Bar.
  - iii. Cross-SBA webinars on the topics of applying for entry within the directories, silk and judicial positions.
  - iv. Workshops for members in relation to best billing practices and monitoring of work allocation and earnings within chambers.

- v. A mentoring scheme, which is available generally and to address any specific step a member might be considering taking such as moving chambers, applying for silk or applying for a judicial position.
6. This response to the Consultation is drafted having had sight of the Bar Council's detailed response, dated 15 November 2024. In common with the Bar Council, we feel that whilst the BSB's desire to hasten the speed of change is no doubt well-intentioned, the manner in which the BSB proposes to achieve that, causes real concerns. We set this out in our answers below, which should be read in conjunction with the Bar Council's document.

**Consultation question 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)**

7. No.
8. We agree with Bar Council's response. In particular, our key concerns are that –
- a. The new positive core duty is unhelpful as it lacks clarity as to what barristers are expected to do. Even more concerningly, it lacks clarity as to what compliance would look like. It is unfair and inappropriate for barristers to face disciplinary action in relation to alleged breaches of unclear and potentially contradictory obligations.
  - b. There is a very real potential for conflicts between the new positive core duty and other duties; namely core duty 2 and the Cab Rank Rule.
  - c. The BSB's proposal seems to be based on a fundamental misunderstanding of the way that chambers are run and the ability of individual barristers to either effect a particular outcome or to measure it.
  - d. The lack of clarity about what the proposed core duty requires by way of compliance will result in wasted time and effort. This will distract from EDI initiatives and hinder progress in this area.
  - e. The BSB's suggested rationale for removing the existing CD8, that the prohibition is already enshrined in the Equality Act, ignores the utility of a regulatory duty which can be enforced outside the forum of litigation.

**Consultation question 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)**

9. No.
10. We agree with the Bar Council's response. If anything, the BSB's proposal is too widely drafted, rather than too narrowly.

**Consultation question 3: Is our approach to the proposed Core Duty appropriate for those at the Employed Bar? (Recommendation 1)**

11. No.
12. We agree with the Bar Council's response. In particular, we agree that it is not clear whether the BSB's proposal that the new core duty applies "when practising" is expected to cover the entirety of an employed barrister's job description or not. This is an important clarification since for employed barristers working in-house, rather than within organisations whose primary function is to provide legal services (solicitors' firms, etc.), their employer is also their client, in whose best interests they are required to act.

**Consultation question 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)**

13. No.
14. We agree with Bar Council's response. We strongly feel that the Equality Rules should not take an outcomes-based approach.
15. Barristers are far more likely to comply with clear, unambiguous, requirements than requirements for them to self-reflect to consider whether they have taken reasonable steps to achieve outcomes. Rule-based regulation ensures a base level of knowledge, understanding and engagement in EDI issues which further change. Those leading change (e.g. heads of chambers and EDOs) can only move the profession in the desired direction if as many individual barristers as possible understand why change is needed.
16. Any scheme that is voluntary, or not reinforced by some degree of compulsion, will result in only partial engagement and only part of the cohort receiving the necessary information.
17. An outcomes-based approach is unworkable in the context of a system that is attempting to regulate individuals, rather than corporate entities. The requirement to achieve outcomes fails to recognise that –
  - a. Individual barristers in a large chambers are not empowered to ensure such matters given the collective nature of chambers;
  - b. In smaller chambers the burden to achieve outcomes falls disproportionately heavily on a small number of barristers; and
  - c. The power relationships which operate at the Bar mean that it is unlikely that many junior barristers, in particular, will be in a position to take meaningful steps to achieve an outcome.
18. Whilst the Chancery Bar Association is supportive of the outcomes which the BSB wishes to achieve, the answer is more likely to be the identification of clearer prescriptive rules that map out a pathway to create the desired outcome, drawing on the experience and knowledge of those who have been working in this area, often for substantial period of time (namely, EDOs, EDO networks, SBAs).

**Consultation question 5: Have we identified the correct priority areas (recruitment, retention, and progression)? (Recommendation 2)**

19. The Chancery Bar Association agrees that these are priority areas, but would suggest that *culture* should be added as the fourth priority area.

**Consultation question 6: Are there any further outcomes we should seek to achieve through the Equality Rules? (Recommendation 2)**

20. No.

**Consultation question 7: Regarding policies:**

21. We agree with the Bar Council's response to this question.

a) **Do you agree with the list of required policies in Recommendation 3?**

22. Save that we do not agree with the utility of an allocation of unassigned work policy, yes.

23. A roundtable meeting held by the Chancery Bar Association in conjunction with the Bar Council and EDOs from various Chancery chambers made clear to us that most chambers analyse work allocation (generally, rather than solely in relation to unassigned work), and the earnings of their members, in a holistic way.

b) **Do you agree that a non-prescriptive approach to the required policies will result in a more reflective and meaningful approach?**

24. No.

25. It is our strong belief that –

- a. Basic minimum policies should be mandatory within each chambers; and

- b. The BSB should continue to provide template policies which have drawn on the experience and expertise of those who have worked on the relevant issues and which incorporate any changed thinking as appropriate. The notion that each individual chambers should draft policies from scratch risks wasting this valuable resource.

c) **How can we ensure that this approach is appropriately targeted to the needs of different practices? (Recommendation 4)**

26. We agree with the Bar Council's response. We cannot see that there will be any difference or difficulty for different practice areas, so long as there is clear guidance in place. Sole practitioners will likely not need to have all of the policies in place that barristers practicing in chambers will have e.g. policies relating to allocation of work.

27. Again, if the BSB provide template policies that can be adapted accordingly, to guide barristers and chambers on what is expected of them, there is a far greater chance of everyone having an appropriate and effective bank of EDI policies to guide good practice.

**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? (Recommendation 5)**

28. No.

29. We agree with the Bar Council's response. Specifically, we agree that high quality management data, collected and analysed over time, is vital. We agree that the key areas are –

- a. Characteristics of the workforce in the chambers or entity;
- b. Applications to become a member of the chambers or entity;
- c. Distribution of work/earnings
- d. 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.

30. We echo the Bar Council's concerns that in respect of smaller sets, of which we represent members of many, it is almost impossible to publish data internally, or externally, without obviously identifying individuals. Even in a larger chambers with many and varied practice areas, analysis of data is only meaningful if it is disaggregated to the different practice areas, which again gives rise to the problems of easy identification.

**Consultation question 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)**

31. No.

32. We agree with the Bar Council's response. It is challenging enough to make change in relation to the characteristics protected by the Equality Act and we are concerned that extending into additional characteristics risks diluting progress that is being made.

**Consultation question 10: Do you agree with our proposed requirement on publishing equalities monitoring data? Please explain your answer. (Recommendation 5)**

33. No.

34. We agree with the Bar Council's response.

**Consultation question 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)**

35. Yes.

36. We agree with the Bar Council's response. In particular, we consider that a prescriptive requirement provided by the BSB as to what should be included within an action plan is of particular importance.

**Consultation question 12: Do you agree with the proposal to remove the prescriptive requirement to undertake training on 'fair recruitment'? (Recommendation 7)**

37. No.

38. We agree with the Bar Council's response.

39. Currently, anyone who is involved in recruitment processes (which could include pupillage, lateral hiring, staff recruitment, voting on tenancy decisions and more) is required to have undertaken fair recruitment training. This is a sensible and important requirement. The removal of that requirement and replacement with a nebulous outcome-focused requirement to "*have the required knowledge and skills to meet the equality outcomes*" fails to provide sufficient guidance and clarity, and will likely result in a reduction in engagement with training. To remove the requirement seems to be a regressive approach to progressing equality.

40. We also consider that the prescriptive requirement for training results in most chambers sourcing high quality, barrister-specific, training for their members. Removal of the prescriptive element will mean that the sourcing of training will be delegated to individuals, who if price conscious and ill informed, may make choices that might have a negative impact on the quality of training received.

**Consultation question 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)**

41. No.

42. We agree with the Bar Council's response. In particular, we support the suggestion that there should be a minimum number of EDI training hours carried out by each barrister in each year.

**Consultation question 14: Do you agree with our proposals in relation to the conduct of an accessibility audit and publication requirements? (Recommendation 9)**

43. Yes.

44. We agree with the Bar Council response.

45. It is not unreasonable to ask chambers to conduct an accessibility audit in relation to disability. It will be helpful to all users of chambers premises to understand what the access arrangements are for a given chambers and this can be done by publishing a statement on chambers' website. It is equally not unreasonable to ask chambers to explore what measures they are capable of implementing, to make their premises as accessible as possible. A requirement to review this every five years, we believe is reasonable.

46. It is important that it is deemed acceptable for the audit to be carried out as a self-assessment exercise. This will ensure that the cost of engaging an external company to conduct the audit will not be a barrier to undertaking the audit.

**Consultation question 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)**

47. No.

48. We agree with the Bar Council's response. Many of our members are from Chambers located within the Inns of Court. Others occupy space in buildings rented from private commercial landlords.

49. Whilst the Bar should continue to strive to improve disability inclusion, the BSB must fully understand the extent of the restrictions faced by chambers based in the Inns and other listed buildings and in rented accommodation generally. The BSB have indicated that they are liaising with relevant local authorities and the Inns in relation to how accessibility needs to be taken into consideration when considering planning permission for building alterations. They will therefore know that decisions to alter listed buildings are not by and large within the gift of chambers or the Inns, and in fact need to be referred for listed building consent to organisations such as Historic England, whose chief aim is the conservation of historical buildings.

50. As the Bar Council explains at paragraph 126 of its response, the ability of any set of Chambers to make alterations to any premises (listed or not) will also turn upon the contractual terms of its lease if it rents its accommodation.

51. It is therefore not possible or proportionate to require barristers located in such buildings to meet the suggested regulatory requirement within 5 years. The BSB proposal goes beyond the obligations in the Equality Act. To require chambers to do what they are capable of is one thing, but to force a situation where barristers are faced with a choice between moving premises entirely (those that are able to), or being in breach of their regulatory duty, is problematic.

52. Some chambers will be in a stronger financial position than others to make alterations. It is not an exaggeration to say that the cost of making premises fully accessible will in some instances, be very significant and simply not affordable for many chambers.

53. A far better approach would be for the regulator to continue to work with Local Authorities, Inns of court and sets of chambers to pursue what is possible in relation to accessibility within the ambit of the Equality Act. The creation of, in some instances, an unachievable regulatory requirement is not in our view the correct approach to encouraging engagement and progress in this important area of EDI.

**Consultation question 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.**

54. No.

55. We refer to our answer to question 15 above.



**Consultation question 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)**

56. No.

57. Save for the Bar Council's suggested ratio for the increased number of EDOs, we agree with the Bar Council's response.

58. Of all the BSB's proposals we consider this to be the most regressive and counter-productive to achieving the very outcomes the BSB states it wishes to achieve. The BSB appears not to have recognised the huge importance of the shared learning of EDOs and the value of their network: there can be no quicker way of disseminating knowledge and triggering a domino effect.

59. As to the suggested minimum ratio of one EDO per 30 members, we would have concerns that in larger chambers there would be too many EDOs. For instance, in a chambers with 250 members, there would be eight EDOs. This would likely result in a lack of clarity as to roles and responsibilities. We note that most chambers in which our members practice have between one and three EDOs and work in conjunction with an EDI committee rather than by themselves. We consider this to be the most effective model.

**Consultation question 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?**

60. We agree with the Bar Council's response. The BSB's belief that self employed barristers individually reflecting is likely to be change-making is not understood and not shared. Those most in need of assistance in the area of EDI are unlikely to create positive outcomes by reflection alone.

61. Barristers are in any event free to take a reflective approach to their own training needs and wishes. The proposed prescriptive requirements do not affect this. The approach proposed by the BSB is not best suited to ensuring that specific, measurable and timely action is taken to address disparities.

**Consultation question 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?**

62. No.

63. We agree with the Bar Council's response.

**Consultation question 20: Are any of the requirements on sole practitioners disproportionate?**

64. Yes.

65. We agree with the Bar Council's response.

**Consultation question 21: Are our proposals to improve disability access proportionate? Please explain your answer.**

66. No.

67. We agree with the Bar Council's response and refer to our answers to question 15 above.

**Consultation question 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?**

68. Yes.

69. We agree with the Bar Council's response.

**Consultation question 22: 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?**

70. We agree with the Bar Council's response.