

BAR STANDARDS BOARD

REGULATING BARRISTERS

New E&D Rules of the Code of Conduct

305.1. A barrister must not, in his professional practice, discriminate improperly 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.

408 A self-employed barrister must take reasonable steps:

408.1 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.

408.2 to ensure that their chambers complies with the following requirements:

Equality and Diversity Officer

- (a) Their chambers must have at least one Equality and Diversity Officer.

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 tenants, pupils, clerks and assessed mini-pupils must be trained in fair recruitment and selection processes.

Fair and Objective Criteria

- (d) Their chambers' recruitment and selection processes must use objective and fair criteria.

Equality monitoring

- (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.

Fair Access to work

- (f) 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.

Harassment

- (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.

Parental leave

- (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.

Rent

- (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.

Flexible Working

- (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.

Reasonable Adjustments Policy

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

Appointment of Diversity Data Officer

- (l) Their chambers must have a Diversity Data Officer (DDO).
- (m) Their chambers must provide the name and contact details of the DDO to the Bar Standards Board (BSB) and must notify the BSB of any change to the identity of the DDO, as soon as reasonably practicable.

Responsibilities of Diversity Data Officer

- (n) The DDO shall comply with the requirements in relation to the collection, processing and publication of Diversity Data set out in the paragraphs (o) to (t) below.

Collection and Publication of Diversity Data

- (o) The DDO shall, , invite the Members of the Workforce to provide Diversity Data in respect of themselves to the DDO using the model questionnaire at Annex C of the BSB Guidance on these rules.
- (p) The DDO shall ensure that such data is anonymised and that an accurate and updated summary of it is published on chambers' website in the first instance by 31st December 2012 and thereafter every three years. If the chambers does not have a website, the DDO shall make such data available to the public on request.
- (q) The published summary of anonymised data shall:
 - (i) exclude data relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the Members of the Workforce; and

- (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 Members of the Workforce.
 - (r) The DDO shall:
 - (i) ensure that chambers 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 Members of the Workforce of the contents of the written policy statement; and
 - (iii) obtain explicit consent from individual Members of 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.
 - (s) The DDO shall have effective systems and controls in place to ensure that any Diversity Data provided to the DDO is collected and held securely and in accordance with the Data Protection Act 1998.
 - (t) The DDO shall take all reasonable steps to ensure that the Diversity Data is not shared with any third parties except as permitted under these rules.
- 409 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.

Definitions

This section contains the definition of terms used in the equality provisions.

1001. In this Code except where otherwise indicated:

“diversity data” means information relating to the following characteristics in respect of an individual:

- Age;
- Gender;
- Disability;
- Ethnic group;
- Religion or belief;
- Sexual orientation;
- Socio-economic background; and
- Caring responsibilities.

“family responsibilities”, for the purposes of rule 408.2(j), includes caring responsibilities for older, young, or disabled dependants or relatives;

“harassment” means any form of unwanted conduct in relation to a relevant protected characteristic which has the effect or purpose of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. A single incident may constitute harassment if it is sufficiently serious. The motive or intention of the perpetrator may be (but is not invariably) relevant.

“investigating” for the purposes of rule 408.2(e) means considering the reasons for disparities in data such as:

- Under- or over-representation of particular groups, e.g. men, women, different ethnic groups or disabled people;
- Absence or particular groups, e.g. men, women, different ethnic groups or disabled people;
- Success rates of particular groups;
- Over- or under-allocation of unassigned work to particular groups.

“members of the workforce” in respect of a chambers will include barristers, pupils, clerks and staff;

“parental leave” means leave taken by the main carer of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex;

“regular review” for the purposes of rule 408.2 (e) 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 tenants, due to the static nature of the numbers, it is likely to be considered reasonable that “regularly” should mean every three years;

“remedial action” for the purposes of rule 408.2 (e) means any action aimed at removing or reducing the disadvantage experienced by particular groups;

“selection panel” for the purposes of rule 408.2 (b) and (c) means any panel formally tasked with the final decision on recruitment or selection of pupils, clerks, mini-pupils or tenants;

“training” for the purposes of rule 408.2 (b) and (c) means any course of study covering all the following areas:

- Fair and effective selection & unconscious bias;
- Selection criteria and assessment methods;
- Attraction and advertising;
- Application processes;
- Shortlisting skills;
- Interviewing skills;
- Assessment and making a selection decision;
- Monitoring and evaluation.

Training may be undertaken in any of the following ways:

- Classroom sessions;
- Online sessions;
- Private study of relevant materials such as the Recruitment Toolkit for chambers.
- Completion of CPD covering fair recruitment and selection processes