



Attorney General's Office

Attorney General's

Equality and Diversity Expectations Statement for Civil and Criminal Panel Counsel and their Chambers

Contents

1. Context	5
2. Purpose	6
3. Equality and Diversity Expectations	6
3.1 Equality and Diversity Policy Statement and Actions	6
3.2 Equalities Monitoring	7
3.3 Addressing under representation in Chambers	7
3.4 Positive Action	7
3.5 Training on Equality and Diversity	8
3.6 Equal access to and fair allocation of work within Chambers	8
3.7 Reasonable Adjustments to Promote Disability Equality	9
3.8 Maternity, paternity, parental leave and flexible working	9
3.9 Handling of complaints	10
3.10 Reviewing and reporting achievements against the Expectations Statement	10
Appendix Sources of additional information	11

1. Context

- 1.1 The Attorney General maintains (by means of an open advertisement and application process) panels of counsel to undertake civil and criminal work for Government Departments. She has four panels of junior Counsel to undertake civil and EU work for all Government departments (three London panels and a Regional Panel). As a general rule all Government departments, their Agencies and their Agents must, when using counsel in civil matters, use counsel from one of the panels. The Attorney General also has three panels of junior Counsel and a panel of senior Counsel (Standing Counsel) to undertake criminal work for a number of Government departments, namely the Revenue and Customs Prosecutions Office, the Office of Rail Regulation, the Health and Safety Executive, the Department for Business Enterprise & Regulatory Reform, the Environment Agency, the Department for Environment, Food and Rural Affairs, the Department for Work and Pensions, and the Office for Standards in Education. As with civil cases, as a general rule all these departments must, when using counsel in criminal matters, use counsel from one of the panels.
- 1.2 In administering the panel counsel system, the on-going relationship between the Attorney General and the chambers to which panel counsel belong ("Chambers") is very important. The Attorney General recognises the support given by Chambers to the important work undertaken by panel counsel and Chambers role as stakeholders in the delivery of legal services for Government. It is for that reason that the Attorney General wishes to work with Chambers as partners in the delivery of the diversity agenda.
- 1.3 The Attorney General has a long standing commitment to and an increasing positive reputation in respect of equality and diversity across all of her activities. As a public body the Attorney General's Office also has positive duties to promote disability equality, gender equality and race equality across its activities including where relevant when it secures external services. The Bar Council itself has a general duty to promote disability, gender and race equality. Both the Attorney General and the Bar Council also have obligations to ensure equality in employment and training in respect of age, sexuality and religion or belief.
- 1.4 Given her firm commitment to furthering equality and diversity and her legal obligations, the Attorney General has decided to put in place a clear statement of equality and diversity expectations in relation to the Bar. . In doing so, the Attorney General is building on the CPS' Equality and Diversity Expectations Statement for the Bar, launched in March 2007. This second statement imposes only requirements that are parallel, not additional, to the CPS statement, with the purpose of ensuring only that as many chambers as possible come within its remit
- 1.5 In setting out these expectations the Attorney General recognises that her objectives and duties in relation to equality and diversity do not overrule other laws or regulations on public procurement.

Guidance on implementation

- 1.6 This Equality and Diversity Expectations Statement reflects the requirements of both the Bar Council's Code of Conduct and the Equality and Diversity Code for the Bar. The latter provides guidance on the implementation of good equality and diversity practice in Chambers and will assist Chambers in implementation of this Statement. Throughout this Statement, there is clear cross referencing where the Attorney General's expectations reflect the Bar Council's Code of Conduct and the Equality and Diversity Code for the Bar. There also is guidance from the Bar Council in the form of frequently asked questions.

2. Purpose

2.1 The purpose of this expectations statement is to:

- provide for the Bar a clear concise statement of expectations on equality and diversity when seeking to work and when working for the Government in civil matters; and
- ensure that Government Departments can continue to meet their legal obligations to promote equality when they secure external legal services from the Bar.

3. Equality and Diversity Expectation

The following are the elements of a framework to address equality and diversity which the Attorney General expects to see in place and actively implemented in Chambers.

3.1 Equality and Diversity Policy Statement and Actions.

The Attorney General expects Chambers to:

- have a written policy statement of their commitments to equality and diversity;
- have a timetabled action plan or set of actions in a wider Chambers Business Plan to implement this policy;
- implement the policy and action plan;
- report to the Attorney General as required on achievements in implementing the Plan; and
- have a designated equal opportunity officer or equality and diversity officer (also required by the Bar Council's Code of Conduct para 404.2(d)).

This policy statement should address recruitment of pupils and members; retention and career development; training; equal access to work and opportunities within chambers; reasonable adjustment to promote disability equality, maternity and parental leave and flexible working, and handling of complaints of discrimination and harassment; the outcomes the Chambers is seeking to achieve and roles and responsibilities in relation to the policy. These expectations are consistent with existing Bar Council Codes, in particular the Bar Council's Code of Conduct para 404.2(d) requires that Chambers have a written equal opportunity policy which will set out Chambers' policies in relation to each of the action areas in the Equality and Diversity Code.

3.2 Equalities Monitoring

The Attorney General expects Chambers to:

- monitor all applicants for pupillage and membership by disability, ethnicity and gender and likewise to monitor all appointees;
- monitor all staff, pupils and members in chambers; and
- make available the results of this monitoring to the Attorney General as required.

These expectations are consistent with para 1.16 of the Bar Council's Equality and Diversity Code.

3.3 Addressing Under Representation in Chambers

The Attorney General expects Chambers to:

- analyse recruitment monitoring data at least annually;
- take corrective action where there are significant unjustifiable differences between those applying and those appointed to pupillage and as members;
- take steps, including the setting of measurable objectives where necessary in terms of gender, ethnic and disability representation to help secure a more representative Chambers (including staff, members and pupils);
- focus recruitment efforts on addressing under representation
- evaluate its monitoring results against relevant benchmarks including Bar Council vocational course graduate data and pupillage data and begin to build up data on disabled practitioners and BVC students. (Guidance on relevant benchmarks is given in para 1.17 of the Bar Council's Equality and Diversity Code); and
- report progress in addressing under representation.

These expectations are consistent with paragraph 1.16 of the Bar Council's Equality and Diversity Code. Further guidance for Chambers on monitoring and tackling under-representation is available in Annex E of the Bar Council's Equality and Diversity Code.

3.4 Positive Action

In some circumstances it will be appropriate for Chambers to take positive action to address significant under representation of particular groups. Positive action refers to measures that Chambers may lawfully take under the sex discrimination and race relations legislation to meet special needs or to train or encourage people from a specific group that is under represented in particular work. Following the positive action programme, participants must then compete for any established posts on equal terms with all other applicants and all appointments must be on merit. This may be for example where there is ongoing and enduring under representation of women, or members of ethnic minorities as barristers compared to their representation in the wider applicant pool. In such circumstances the Attorney General expects Chambers to:

- consider actively and put in place positive action programmes where the evidence warrants such programmes;

- explain the reasoning and benefits of positive action to all staff, members, pupils and potential applicants; and
- evaluate the impact of any positive action programme and cease the programme once the results have been achieved.

(Para 2.25 of the Bar Council's Equality and Diversity Code sets out a definition of lawful positive action and distinguishes this from positive discrimination.)

There is no prohibition in the disability discrimination legislation against positive measures in favour of disabled people. It anticipates that such measures, including reasonable adjustments (see para. 3.1), will be taken. Chambers are expected to:

- encourage disabled people to apply to chambers;
- review their recruitment and marketing literature to include appropriate references to disability access;
- identify chambers' level of accessibility to disabled people;
- offer mini-pupillages to appropriately qualified disabled students; and
- take other appropriate outreach steps.

These expectations are consistent with para 1.107 of the Bar Council's Equality and Diversity Code which sets out the position in relation to disability legislation.

3.5 Training on Equality and Diversity

The Attorney General expects Chambers to:

- ensure all members, staff and pupils receive basic training on equality and diversity which covers both legal obligations and good practice;
- ensure equality and diversity training covers all equality strands including age, disability, faith, ethnicity, gender and sexuality;
- integrate equality and diversity issues into other training provided for chambers staff, members and pupils; and
- keep training under review and in line with current developments.

(Para 1.8 of the Bar Council's Equality and Diversity Code recommends a least one member of the selection committee is trained in fair selection methods.)

3.6 Equal Access to and Fair Allocation of Work Within Chambers

The Attorney General expects Chambers to:

- ensure equal access to the range of work available;
- ensure a fair allocation of work within Chambers;
- monitor pupils and junior tenant access to work by disability, ethnicity and gender;
- monitor the allocation to barristers of all returns and unnamed work coming into Chambers by disability, ethnicity and gender;

- address any significant differences in work access and work allocation;
- reallocate any work on the basis of skills and experience ensuring no discrimination in work reallocation; and
- provide appropriate guidance for Clerks on the fair allocation of work including allocation of returns.

(Para 1.46 of the Bar Council's Equality and Diversity Code refers to Chambers duties to brief their clerks in fair allocation of work and in monitoring work allocation. Paras 1.36 to 1.52 of the Bar Council's Equality and Diversity Code also refers to fair access to and fair allocation of work. Also para 404.2(b) of the Bar Council's Code of Conduct requires Heads of Chambers to ensure that the affairs of their Chambers are conducted in a manner which is fair and equitable for barristers and pupils)

3.7 Reasonable Adjustments to Promote Disability Equality

There is a recognition that disability equality issues are both less well developed in this sector and require specific practical responses.

In this context the Attorney General expects Chambers to which panel counsel belong to:

- take steps to raise the awareness of members and staff of their obligations under the disabilities legislation;
- advertise their commitment to providing reasonable adjustments in relation to the recruitment of members, staff and pupils and the provision of legal services; and
- respond appropriately to requests for reasonable adjustments.

(These expectations are consistent with paras 1.2 and 1.3 of the Bar Council's Equality and Diversity Code. Also relevant is Annex D to the Bar Council's Equality and Diversity Code guidance on reasonable adjustments in pupillage and tenancy recruitments.)

3.8 Maternity, Paternity, Parental Leave and Flexible Working

The Attorney General expects Chambers to:

- have a written policy on maternity, paternity and paternal leave which contains particulars of:
 - (a) the extent of period of leave offered free of rent and Chambers expenses;
 - (b) the member's right to return to Chambers after a specified period of leave.
- have a written policy permitting members of Chambers to take career breaks or work flexibly.

3.9 Handling of Complaints

The Attorney General expects Chambers to:

- have a complaints policy including harassment which sets out standards for acceptable and unacceptable behaviour and procedures for dealing with complaints of such behaviour;
- have a procedure for resolving complaints informally and promptly;
- have a formal procedure for investigating and resolving complaints which become formalised; and
- have a clear policy statement which treats breaches of equality and diversity policies and procedures as a disciplinary issue.

(This reflects Annexes E and F of the Bar Council's Equality and Diversity Code on harassment and on complaints and grievances)

3.10 Reviewing and Reporting Achievements Against the Expectations Statement

The Attorney General requests each set of Chambers to report annually or such longer period as she may specify in any case or class of case to her on progress against this expectations statement

The progress reports must be produced in accordance with a standard reporting format. The progress report will be expected to be a clear, concise and verifiable statement of the position and progress at a given point in the reporting cycle.

Applicants to become panel counsel will be required to confirm that their chambers have policies in place which meet the Attorney General's expectations, perhaps by reference to the last Chambers annual report or that their Chambers have a timetabled and realistic plan to meet the Attorney General's expectations.

Sources of Additional Information

1. **The Bar Council, Code of Conduct**
2. **The Bar Council, Equality and Diversity Code for the Bar (Nov 2004)**
3. **Commission for Racial Equality, Guide on Race Equality and the Procurement of Public Services 2002 – 03.**
4. **Race Relations Act 1976**
5. **Disability Discrimination Act 1995**
6. **Sex Discrimination Act 1975**



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