

# **3DJB EQUALITY & DIVERSITY POLICY**

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# INTRODUCTION and EQUALITY STATEMENT

Chambers is committed to promoting Equality and Diversity. Diversity is achieved by creating a profession that allows all of the best candidates with the necessary skills, whatever their background and lifestyles or personal characteristics, to apply, to be admitted, and to flourish. If that is done then steps to encourage diversity become a route to attracting different skills and attributes into the profession and achieving excellence and not a method of diluting the quality of the profession.

Merit is achieved by identifying the skills and achievements that are truly required for success as a barrister and then selecting on an objective basis against those skills and achievements as criteria rather than simply identifying a stereotype and attempting to repeat that stereotype. This does not mean that personal attributes and social skills have no place, simply that the ability to "fit in" to a particular social group is not of itself a sufficient reason to either select or exclude a particular individual

Good client care requires an understanding of the cultures and sensitivities of others, to look behind stereotypes and to see that people's differences, whether they be cultural, physical abilities or otherwise can bring positive contributions. Systems, such as fair recruitment processes, policies on flexible working and monitoring, will help to ensure that working practices really are achieving equity of outcome.

## **A. BARRISTERS' OBLIGATIONS**

A barrister must not discriminate. A Barrister's conduct in this area is governed by Statute and by the Code of Conduct. The relevant statutory provisions are to be found in the Equality Act 2010. Barristers owe a legal duty not to discriminate and the Act defines discrimination and identifies 9 "Protected Characteristics". These are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Discrimination obligations apply to all barristers in the way that they provide a service to professional or lay clients. It is unlawful for barristers to discriminate against lay or professional clients in the provision of services for reasons related to a protected characteristic.

Discrimination obligations play a part in our everyday lives in chambers in the relationships with colleagues, staff and pupils. This is especially important in relation to:

- a. the recruitment of staff and the selection of pupils and tenants;
- b. the terms, opportunities for training or gaining experience, benefits and services for prospective or current members of staff, pupils and tenants;

- c. the termination of service of staff or the termination of pupillage or tenancy, including pressure to leave;
- d. subjecting staff, pupils or tenants to any detrimental treatment.

Discrimination following termination of the relationship between barristers and staff, pupils or tenants may be unlawful where there is sufficient connection between the relationship and the discriminatory act complained of, for example in the provision of references or post-employment benefits. The duties apply to barristers' clerks as they apply to barristers.

## **B. WHAT IS DISCRIMINATION? THE PROTECTED CHARACTERISTICS**

Racial grounds encompasses discrimination on grounds of nationality, race, colour and ethnic or national origins.

Sex discrimination encompasses discrimination against a man or a woman.

Pregnancy and maternity discrimination includes discrimination against a woman because of: pregnancy or illness resulting from pregnancy; giving birth to a (living or dead) child; breast-feeding; being on compulsory maternity leave; or exercising or seeking to exercise her right to ordinary or additional maternity leave. The period during which women are so protected lasts from the beginning of pregnancy to the end of maternity leave or in relation to giving birth (including breast-feeding) up to 26 weeks following the date of birth.

The concept of disability is broadly defined. It covers a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. This includes not only obvious visible disability but may include conditions such as depression and cancer. There is a positive duty to make reasonable adjustments to avoid putting a disabled person at a substantial disadvantage when compared with non-disabled persons. That duty may require having to make changes to working arrangements or practices or to physical features such as providing access to a building; or it may require the provision of auxiliary aids and services such as special computer software.

Disability discrimination encompasses direct discrimination (i.e. discriminatory treatment of a disabled person because of their disability), failure to comply with the duty to make reasonable adjustments and, in addition, unfavourable treatment of a disabled person because of something arising in consequence of their disability, such as disability-related sickness absence, if such treatment cannot be shown to be a proportionate means of achieving a legitimate aim.

Age discrimination. It is unlawful for older or younger age to be the cause of less favourable treatment in the workplace or in vocational training such as refusing pupillage to an older candidate, telling age-related jokes, or assuming that a candidate would be unsuitable on the grounds of fitness, energy or enthusiasm because of age.

Religion or belief discrimination. It is unlawful for someone to discriminate against another because of religion (or a lack of religion) or because of a particular philosophical belief (or lack of belief) in any aspect of employment, when providing goods, facilities and services, education and when exercising public functions (subject to some limited exceptions).

Sexual orientation discrimination. Being gay, lesbian, bisexual or straight should not place a pupil, member or an employee at a disadvantage. Unlawful sexual orientation discrimination happens when someone is treated less favourably due to their sexual orientation, their perceived sexual orientation, or the sexual orientation of those they associate with.

Gender identity/reassignment discrimination. Protection is afforded to a person who wishes to identify in a different gender whether or not that person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their gender by changing physiological or other attributes of gender.

Marriage and Civil Partnership. It is unlawful to discriminate for reasons of marriage or civil partnership status.

### **C. FORMS OF DISCRIMINATION – SOME KEY CONCEPTS**

Direct discrimination occurs where one person is treated less favourably than another was or would be treated in the same or similar circumstances because of a protected characteristic. Associative Discrimination. Protection against discrimination is afforded to persons who associate with a person with a protected characteristic and to a person who is perceived (albeit wrongly) to be a person with a protected characteristic except in relation to marriage and civil partnership status.

Indirect discrimination occurs where an apparently neutral provision, criterion or practice puts the victim and those with whom the victim shares a protected characteristic at a particular disadvantage when compared with others who do not share it, and where the provision, criterion or practice is not a proportionate means of achieving a legitimate aim (for example, holding an internal chambers training seminar at a time when a particular group of members will find it difficult to attend and when the meeting could reasonably be held at some other time which would not exclude any particular group).

Victimisation. It is unlawful to subject a person to a detriment because he or she has brought proceedings under the anti-discrimination legislation, given evidence or information in connection with such proceedings or has alleged that unlawful

discrimination has occurred (or is suspected of doing or believed to have done any of the above).

Harassment. It is prohibited to engage in any form of unwanted conduct related to any of the protected characteristics (except for pregnancy and maternity and marital or civil partnership status), which is intended or has the effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. The fact that one person may be able to ignore or deal comfortably with certain behaviour does not mean that it is acceptable if directed at another. A single incident may constitute harassment if it is sufficiently serious. Relevant considerations include the perception of the victim, the circumstances of the case and whether it is reasonable for the conduct to amount to harassment. It should be noted that an employer may be held vicariously liable for acts of harassment committed by his or her employees. An employer may further be held liable for acts of harassment by third parties of which he or she was aware but failed to take such steps as would have been reasonably practicable to prevent it.

Disability discrimination covers two distinct forms of discrimination which do not arise in respect of any other protected characteristic, namely: the concept of discrimination arising from disability and the failure to comply with the duty to make reasonable adjustments. Barristers are normally employers and service providers and therefore have a duty to make reasonable adjustments where a work provision or a physical feature of their premises places a disabled employee or client at a disadvantage compared with others. The general duty is to make reasonable adjustments to prevent that disadvantage (for example by removing some barrier that makes it difficult for disabled employees or clients to access premises, services or their workplace or by changing working practices or providing auxiliary aids).

Pre-offer employment enquiries as to health. In most circumstances pre-employment enquiries concerning, health, disability, sickness or attendance rates are prohibited. This excludes questions asked for diversity monitoring purposes or offers to make reasonable adjustments to the recruitment process.

Unintentional Discrimination and Justification. It is generally not a defence to claims for direct discrimination and victimisation that there was no intention to discriminate or that the discrimination was justified, except in relation to age discrimination. It is not unlawful to discriminate both directly and indirectly on the basis of age if such discrimination can be objectively justified. It must, however, be shown that this discrimination is a 'proportionate' means of achieving a 'legitimate' aim, notwithstanding its discriminatory effect. In relation to indirect discrimination, treatment may generally be justified if it can be shown that it is a proportionate means of achieving a legitimate aim, but the lack of an intention to discriminate is not a defence. A similar objective justification defence is also available in relation to the form of disability discrimination arising from disability.

Encouragement, training and development of potential are an important part of any equal opportunity programme, particularly where the conditions of under-representation are

established through the regular review of diversity monitoring data. These statements also emphasize the duty to make adjustments (including alterations to the building and reviews of processes and procedures) to make chambers and the services it offers accessible to disabled persons.

#### **D. CLARIFYING SOME COMMON MISCONCEPTIONS**

Proof of discrimination does not depend on showing motive or bad faith. It is possible to discriminate without intending to discriminate. Even treatment which is well-intentioned may amount to discrimination. There is no defence of "joke" or "banter". Jokes and banter which cause offence may be discriminatory even though there was no intention to cause offence.

Discrimination which involves the more favourable treatment of a member of a disadvantaged group ("positive discrimination") is unlawful in relation to persons encompassed within the anti-discrimination legislation, save that a form of positive discrimination may be exercised in relation to disabled persons who may require particular adjustments to be made. Applications may be encouraged from groups which are under-represented in an organisation (this is known as "positive action") but applicants from such groups cannot be positively advantaged in any selection process, except in limited circumstances where candidates are of equal merit. Reasonable adjustments can, and by law must, be made to accommodate and encourage people with disabilities.

Positive Action enables a chambers or a barrister or clerk to single out persons with a particular protected characteristic and take any action which is a proportionate means of achieving the aim of enabling or encouraging them to overcome a disadvantage connected to the protected characteristic. A chambers or barrister or clerk can also take action to meet any needs employees, pupils or tenants have as a result of disadvantage connected to the protected characteristic or to encourage them to participate in an activity where participation by people with the protected characteristic is disproportionately low. When faced with two or more candidates of equal merit in recruitment and selection exercises only, the Act permits more favourable treatment of (i.e. selection of) someone because of a particular protected characteristic if people with that particular characteristic are underrepresented in the chambers. In practice it is rare for any two candidates to be of equal merit, and until this aspect of the law is clarified, Chambers will be cautious in exercising positive action of this kind.

Individuals possessing the same protected characteristic may commit acts of unlawful discrimination against each other: a woman may unlawfully discriminate against another woman, for example, or a barrister in one racial group against another member of that group.

## A. RECRUITMENT

1. All aspects of recruitment shall be compliant with the relevant provisions of the Equality Act 2010, the Bar's Code of Conduct and Chambers' commitment to equality and diversity.
2. The term 'recruitment' covers the whole process of filling a vacancy, from seeking applicants to making the selection decision. Selection refers to the process of choosing from among those candidates who have applied, and includes application forms, short-listing and any mechanisms used to help the decision making process, such as selection tests, references and interviews.
3. Recruitment policy will be flexible in order to meet the changing needs of Chambers. Where Chambers advertises for prospective pupils, tenants or staff the advertisement shall include encouragement of applications from groups which are under-represented in chambers and a statement of compliance with the Equality & Diversity Guidelines then in place.
4. Chambers' recruitment procedure shall be written, comply with paragraph 1 above, and shall draw upon the guidance set out in the Bar Council's Fair Recruitment Guide for the Bar 2015.

### **Training**

5. Chambers will ensure that 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 every member of all selection panels, must have received recent and appropriate training in fair recruitment and selection processes, except in exceptional circumstances [Code rC110 c.]

6. Training is defined in the Code [gC142] as “any course of study covering all the following areas: fair and effective selection and avoiding unconscious bias; attraction and advertising; application processes; shortlisting skills; interviewing skills; assessment and making a selection decision; monitoring and evaluation”

7. Private study of the Bar Council’s Fair Recruitment Guide may satisfy the above requirements although Chambers will encourage all members to attend an appropriate course.

**Fair and objective criteria**

8. Chambers will ensure that the recruitment and selection process uses fair and objective criteria [Code rC110d.] which shall be applied consistently.



## **B. EQUALITY & DIVERSITY OFFICER**

### **Legal Requirements**

There is no legal requirement for Chambers to appoint an Equality and Diversity Officer.

### **Regulatory requirements**

Code rC110: each member of chambers must take reasonable steps to ensure that chambers has at least one Equality and Diversity Officer.

### **Policy**

1. The Equality and Diversity Officer should be a senior member of Chambers who has been trained in equality and diversity.
2. The Equality and Diversity Officer should be prepared to devote sufficient time to the role, including making himself or herself available to members of staff and colleagues to give advice and discuss any problems which may arise.
3. The Equality and Diversity Officer should be responsible for ensuring that:
  - (a) a written equality and diversity policy for Chambers is adopted, implemented, then reviewed and kept up-to-date;
  - (b) all Chambers' policies and procedures (whether or not documented) are reviewed regularly to ensure that they comply with the equality and diversity policy and these guidelines and that records are kept of the outcome of reviews and of action taken in response;

(c) equality and diversity training is provided for all members of Chambers and staff including clerks and that refresher courses are provided periodically once initial training has been given;

(d) advice is offered to the Head of Chambers, the senior clerk, the chair of the pupillage committee, members of the Chambers management committee and individual members of Chambers on equality and diversity issues, both in response to a request and whenever the Equality and Diversity Officer considers that equality and diversity issues arise;

(e) he or she is available to individual members or Chambers staff to offer advice on equality issues and to provide an informal route, if requested, for the resolution of grievances;

and

(f) monitoring data from pupillage, member or staff recruitment exercises, chambers membership, and the allocation of unassigned work is analysed regularly and that any actions necessary to remedy or investigate unfair outcomes are developed and added to Chambers' equality action plan.

4. The EDO shall keep written records of the implementation of this Policy and Plan, to include the monitoring of unassigned work allocation, workforce diversity and applications for pupillage and tenancy.

5. The EDO shall serve for a term of two years (unless retiring early from the role) and shall be required to present themselves for re-election at the annual general meeting of Chambers in alternate years.

6. The Policy and Plan shall be reviewed annually in November by the EDO, who shall report to the Management Committee in writing as to the results of this review.

## C. FAIR ACCESS TO WORK

1. The aim of this policy is to comply with the requirements of the Code of Conduct and the accompanying Guidelines insofar as to ensure that the affairs of Chambers are 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.

### **Allocation of work**

2. Chambers recognises that a successful practice is often influenced by the range and quality of instructions received by a barrister, particularly during pupillage and in the early stages of their career. Different types of work provide the opportunity for newly qualified barristers to explore areas of interest, build on their skills and ultimately develop a successful career at the Bar. It is therefore in the shared interest of both Chambers and their members that work is allocated fairly and that particular attention is paid to this in the development of pupils, starter tenants and those returning from parental leave.

3. In respect of each piece of unassigned work, Chambers' clerks shall, first, record it appropriately on the LEX software system and, secondly, shall have regard to Chambers' written policy for the allocation of unassigned work (set out below) at all material times.

4. Where possible, Chambers will seek to ensure that instructions and briefs are not delivered by solicitors at such times as to preclude those with childcare and other dependent care commitments and disabled barristers from being eligible for that work (for example, where a brief is not delivered until Friday afternoon for a trial on Monday). If a brief arrives at the last minute, consideration will be given to whether it can be forwarded electronically, for example by scanning and emailing it.

5. Chambers will seek actively to rotate briefs to ensure that pupils in their second-six receive a fair range of different types of work. Reviews with pupils and starter tenants will include discussion of the types of work they have received to ensure that this is supporting their development.

6. Chambers will seek to provide clerks with diversity training and brief them on the importance of fair allocation of work.

7. Potentially discriminatory requests/instructions from solicitors. It is unlawful for any person in instructing a barrister, to discriminate against them. This includes clients, clerks and solicitors. In addition, the Solicitors Regulation Authority handbook 2011 prohibits solicitors from discriminating unlawfully against any person in the course of their professional dealings. Such dealings include the instruction of barristers.

8. Chambers will also ensure that clerks are aware of the legal position and the requirement that work is distributed fairly.

9. If Chambers receives requests that are discriminatory, for example requests from solicitors for a barrister of a particular sex or race for a particular piece of work, the clerks will explain to the solicitors that such requests are unlawful. On no account, will Chambers comply with any request or requirement to discriminate on unlawful grounds in the choice of barristers. Should the solicitor refuse to modify or withdraw the request and continue to insist on a discriminatory allocation of work, Chambers will politely refuse such instructions. The clerk will then make a full note of the incident immediately and the solicitor may be reported to his or her professional disciplinary body.

10. Example – for illustration purposes:

A solicitor asks which male barristers are available to do a trial. The clerk asks why the solicitor is asking for a male barrister and the solicitor says that the litigation has been very acrimonious, and that the client wants a robust cross-examiner who will not be intimidated by the opposition. The clerk says he cannot put forward

counsel on the basis of their sex, but can recommend several barristers who are available and who have reputations as robust and fearless cross-examiners. The list includes both women and men.

### **Practice development**

11. Chambers will encourage regular practice development meetings for tenants with the Senior Clerk. The purpose of these meetings is to enable discussion of work allocation, work opportunity and development of individual practices. Pupil supervisors will discuss these issues with pupils and where appropriate, the clerks and the Equality and Diversity Officer.

12. Chambers will seek to set up mentoring schemes particularly for the pupils, junior tenants, starter tenants and those returning to practice after parental leave or a career break, where advice and guidance can be offered regarding practice development.

### **Marketing of barristers and pupils/networking activities**

13. Chambers will seek to ensure that marketing and networking activities such as giving or attending seminars and lectures and social activities such as quiz nights and sporting activities, are organised and publicised within Chambers in such a way that all pupils and tenants can, so far as practicable, be equally involved.

### **Complaints or concerns about allocation of work**

14. Should any member of Chambers, pupil or employee have a complaint or grievance regarding the operation of this policy, it should be pursued and dealt with as set out in Section G to this policy. The nominated member of Chambers for those purposes shall be the most senior (in terms of number of years' call) member of the Equal Opportunities Committee.

## **Chambers' written policy for the allocation of unassigned work**

15. Fair allocation of work means that a barrister's knowledge and expertise is taken into account, and that work is allocated for justifiable reasons. It does not mean blindly equal allocation of work.

16. 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 telephone call from an instructing solicitor. Any matter coming into Chambers, by any means, that does not have a named individual assigned to it, is unassigned work.

17. The clerks shall only allocate unassigned work as a result of liaison with the instructing solicitor and on the solicitor's instructions. In that process, the clerks shall have regard to the provisions of this section, including:

- (a) the nature and complexity of the work;
- (b) the required level of counsel's knowledge and expertise;
- (c) the likely fee, when relevant.

## D. PARENTAL LEAVE

### Policy

1. It is the aim of this policy to:

- (a) encourage members following Parental leave to return to Chambers and continue to build successful practices;
- (b) prevent discrimination on grounds of parental responsibility;
- (c) encourage and support members taking time off following the birth or adoption of a child;
- (d) comply with the requirements of the Code of Conduct and accompanying Guidelines.

It is Chambers' express policy that tenants should be encouraged and supported to combine a personal and a professional life.

2. It is noted that this policy will require regular review and reconsideration. It is proposed that the EDO will review the policy annually.

3. "Parental leave" refers to leave taken by the main carer of a child following birth or adoption. This could be the mother, father or adoptive parent of either sex. "Co-parental leave" refers to leave taken by the other parent of the child. "Shared care leave" refers to leave taken by one of two parents sharing care of the child in broadly equal amounts following birth or adoption.

4. In formulating this policy Chambers has been keen to avoid the need to vary chambers' current method of funding - i.e. we have sought to maintain the % only basis of funding, as opposed to a static (or variable) monthly payment together with a % contribution. This policy is seen as the most facilitative and generally fairest for all members of chambers, and of particular benefit to those tenants just establishing their practice, and indeed to those tenants seeking to prioritise personal commitments before professional commitments at any time during their career. Chambers has also been keen to avoid the need to impose time limits upon a tenant's absence.

5. Finally, account has been taken of the structure of these particular chambers, the notable feature being that we are a relatively small set. Any policy agreed upon by Chambers must be both financially viable, and must engender sufficient support within Chambers to maintain a sense of fairness and overall morale.
6. This policy shall apply to all members of Chambers who were/are a full member of Chambers i.e. a tenant at the time of the birth or adoption of the relevant child.
7. Every member of Chambers is entitled to a minimum of six months' parental leave commencing from the birth or adoption of a child for whom they are the primary carer.
8. After the applicable birth or adoption a tenant who is the primary carer of the child shall enjoy a 6 month period during which they shall only be required to pay a contribution towards Chambers' expenses at a level fixed at one half of the percentage paid by the other tenants. This 6 month period shall be applied to two consecutive Chambers' financial quarters falling entirely within a window commencing upon the start of parental leave and ending on the second anniversary of the birth or adoption.. The tenant shall give one month's written notice to the Senior Clerk and the Head of Chambers of the six month period they have chosen.
9. Co-parental leave:- Immediately upon a tenant taking co-parental leave for a minimum of two weeks pursuant to their partner having given birth to (or pursuant to an adoption having become the primary carer of) a child that tenant shall enjoy a 1 month period during which they shall only be required to pay a contribution towards Chambers' expenses at a level fixed at one half of the percentage paid by the other tenants. This shall be calculated by deducting one sixth from that tenant's quarterly Chambers' bill for the quarter during which the co-parental leave is taken. This provision is not found in the requirements of the Code of Conduct nor the Supporting Information to the BSB Handbook Equality Rules and reflects the priority give by Chambers to the work-life balance of members.



10. Shared care leave:- six months after the applicable birth or adoption a shared carer taking shared care leave for a cumulative minimum of six weeks during the three month period immediately following the birth or adoption of their child shall enjoy a 3 month period during which they shall only be required to pay a contribution towards Chambers' expenses at a level fixed at one half of the percentage paid by the other tenants. This shall be calculated by deducting one half from that tenant's quarterly Chambers' bill for the quarter commencing after the birth or adoption, or the following quarter. The tenant shall nominate which quarter will apply by no later than one month after the birth or adoption (written notice to SC and HOC).

11. For the avoidance of doubt, there is no requirement that a tenant 'return to work' after any specified period of time. Providing that they hold a valid practicing certificate as and when they undertake Chambers' work, then a tenant shall be entitled to take as little or as much time away from chambers as they wish. However, if they remain absent from active practice for five years from the date of birth or adoption of the relevant child, they shall be deemed to have the status of Associate Member as defined by the Chambers Constitution (articles 57 to 59), unless their period of Parental Leave shall have been extended by the Management Committee on the ground of exceptional circumstances. For the avoidance of doubt, Full Membership will be resumed when the Member returns to active practice. This provision is significantly more generous than that required by the Code of Conduct and the Guidelines provided by the BSB in its Supporting Information to the BSB Handbook Equality Rules.

12. A member on parental, co-parental or shared care leave is encouraged to maintain contact with Chambers.

13. A member is entitled during their parental, co-parental or shared care leave to:-  
(a) be offered opportunities to do appropriate work if this is requested (which will not affect the reduction in their contribution to Chambers' expenses set out above);

- (b) be invited to training events, social occasions, marketing events and Chambers' meetings;
- (c) be informed about and consulted on significant issues affecting their practice and the practice of Chambers; and
- (d) receive assistance with the re-establishment of their practice on their return to work, including (where requested) a practice meeting with the senior clerk within the two weeks before the member's return to work.

14. If a member has a stillbirth, in that their baby is born dead after the beginning of the 24<sup>th</sup> week of pregnancy, they shall be entitled to Parental leave as set out above, and if a member's partner has a stillbirth, they shall be entitled to Co-parental leave.

15. Should any member of Chambers have a complaint or grievance regarding the operation of this policy, it should be pursued and dealt with as set out in Action Area G to this policy.

## E. FLEXIBLE WORKING, PART-TIME WORKING AND CAREER BREAKS

### **Policy**

#### (a) Career break

1. Chambers policy is that full members of Chambers i.e. tenants may take a career break as and when they desire. Providing that they hold a valid practising certificate as and when they undertake Chambers' work, then a tenant shall be entitled to take as little or as much time away from chambers as they wish. During the period of leave he shall continue to contribute to Chambers expenses by regular payments based on a percentage of his receipts, in the same fashion as other Members. However, if they remain absent from active practice for one year, they shall be deemed to have the status of Associate Member as defined by the Chambers Constitution (articles 57 to 59), unless their Career Break shall have been extended by the Management Committee on the ground of exceptional circumstances. For the avoidance of doubt, Full Membership will be resumed when the Member returns to active practice.

2. The amount of room space allocated to a Member shall not be altered without his agreement during the first 6 months of parental leave and / or a career break. Following the expiry of that six month period the amount of such space shall be reviewed by the Management Committee and further reviewed at three monthly intervals and when circumstances make this appropriate e.g. upon the recruitment of new members of Chambers.

(b) Flexible and part-time working; working from home

3. Chambers policy is that a Member has the right to work part time, to work flexible hours and to work from home. In each case that right shall be subject to suitable arrangements being agreed between the Member and Senior Clerk from time to time, taking into account the requirements of Chambers' management and finances and the competing needs of the Member so concerned. The financial contribution of a Member working part-time, flexibly or taking a career break shall be calculated on the same basis as for all Members of Chambers.

4. In the event of it proving be difficult to agree such arrangements, the Member and / or the Senior Clerk may consult the EDO, who will assist them in reaching a consensus. In the event of further difficulty, any of those persons may ask the Head of Chambers to become involved.

5. Chambers will ensure that a member working flexibly is :-

- (a) invited to training events, social occasions, marketing events and Chambers' meetings; and
- (b) informed about and consulted on significant issues affecting their practice and the practice of Chambers.

6. Should any member of Chambers have a complaint or grievance regarding the operation of this policy, it should be pursued and dealt with as set out in Section G to this policy. The nominated member of Chambers for those purposes shall be the EDO.

## F. HARASSMENT, DISCRIMINATION & BULLYING

### Statement of Policy

1. Chambers is committed to providing a working environment in which all individuals including members, pupils, mini-pupils, employees, clients and the public are treated with dignity and respect. Chambers is determined to promote a working environment, in which all individuals are treated equally and can flourish.

2. For the purposes of this Policy, harassment shall be defined as set out below and shall be deemed to include discrimination (as defined and considered in the Introduction above) and bullying.

3. Chambers will not tolerate any form of harassment and will take all necessary steps to ensure that its members and employees are not subject to harassment. Harassment constitutes professional misconduct and is prohibited by the Bar Council's Code of Conduct. Harassment on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation is unlawful under the Equality Act 2010.

### The Scope of the Policy

4. This policy applies to all members and employees of Chambers, to pupils and to mini-pupils. The policy applies to:

- all premises where Chambers' business is conducted;
- all Chambers' related activities performed at any other site away from the chambers;
- any social, business or other function where conduct or comments may have an effect on Chambers or relationships within Chambers.

## Definition of Harassment

4. Harassment is defined by section 26 of the Equality Act 2010 as follows:-

### 26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are: age; disability; gender reassignment; race; religion or belief; sex; sexual orientation.

5. The following are examples of types of behaviour, which may amount to harassment or bullying:

- physical assault, including sexual assault;
- suggesting that sexual favours or a sexual relationship may result in work opportunities or career advancement;
- unnecessary physical contact;
- exclusion from social networks and activities or other forms of isolation;
- isolation;
- bullying;
- compromising suggestions or invitations;
- suggestive remarks or looks;
- display of offensive materials, including on a computer screen;
- tasteless jokes or verbal abuse, including any sent by email;
- offensive remarks or ridicule;
- shouting at or being sarcastic towards, ridiculing or demeaning someone;
- overbearing or intimidating levels of supervision
- inappropriate and / or derogatory remarks about someone's performance
- dealing inappropriately or inadequately with complaints of harassment and bullying

6. Disciplinary action will be taken against any member or employee of Chambers found to have harassed a colleague or other person in the conduct of their work.

### **Communication of the Policy on Harassment**

7. A copy of this policy will be provided to all members, employees, pupils and mini-pupils of the Chambers. If necessary, a briefing will be provided so that all members and employees are aware of behaviour, which is unacceptable within the working environment, and are aware of the harassment policy, procedures for making complaints against and assistance available.

## **Resolving Reports of Harassment**

8. Chambers is committed to providing a supportive environment in which to resolve problems of harassment, and has put in place a number of options of resolving problems. A non-adversarial approach will be adopted.

9. A person experiencing harassment is encouraged to report it at an early stage, preferably through the informal procedure. Making a report at an early stage is more likely to result in a satisfactorily resolution and prevent harassment escalating.

10. Any member, employee, pupil or mini-pupil in Chambers has the right to bring to the attention of an appropriate person any behaviour, which they consider to be contrary to the harassment policy, irrespective of whether they are the recipients of the harassment. A member or employee of Chambers who witnesses behaviour, which they consider contravenes the harassment policy, should take immediate action to indicate that such behaviour is unacceptable as failure to do so could be interpreted as condoning such behaviour.

### Informal Resolution Options

11. When an incident of harassment occurs, the recipient is encouraged to communicate their disapproval and objections immediately to the harasser, if they feel able to do so, and request the harasser to stop.

12. If the harasser does not stop or if the recipient is uncomfortable about addressing the harasser directly, he or she should bring their concerns to the attention of the Chambers Equality & Diversity Officer or other person named in the Chambers Code on Harassment and Bullying. In the first instance, the report may be made anonymously. An anonymous report should not result in action against an individual but may be used to enable Chambers to advise the complainant about Chambers' policies, encourage them to raise a concern by the non-anonymous informal route, and offer emotional support.



13. Within one week of the receipt of the non-anonymous informal report an investigation will be made, if necessary, by the EDO (with the complainant's permission). The EDO will take such action and arrange such investigation as they consider necessary with a view to resolving the matter informally, promptly and in confidence.

#### Formal Complaints Resolution

14. Where the person subject to harassment does not wish to pursue the informal resolution options or has exhausted such options, they may make a formal complaint. All such complaints will be promptly investigated.

15. A formal complaint should be made in writing to the Head of Chambers. Within one week of the receipt of the complaint an investigation of the allegation will be made and completed within 14 days, unless there are good reasons for delay.

16. Investigations will be conducted in accordance with standards of natural justice. Where possible, two members of chambers not directly involved in the complaint should be requested to investigate the complaint and keep a written record of their investigation stating whether they uphold the allegation of harassment or not. The complainant should be permitted to be accompanied by a colleague or friend at any hearing or meetings in respect of the investigation.

17. If the allegation of harassment is upheld, appropriate remedial actions will be taken. This may include any of the following;

- formal apology;
- counselling;
- written warning
- change of work assignment
- report to the relevant Inn recommending the removal of pupil supervisor status;

- suspension or discharge of member or employee in accordance with the Chambers constitution and the employee's contractual and employment rights
- referral to Professional Conduct Committee or the Bar Standards Board

18. In addition, to the sanction that may be imposed on a member of an employee by Chambers as part of a complaint resolution, members of Chambers who engage in harassment may be liable for damages in the event of a civil lawsuit or may face further sanctions imposed by the Bar Council's Professional Conduct and Complaints Committee, or, in a very serious case, criminal sanctions.

Obligation to report serious misconduct

19. Harassment is capable of constituting serious misconduct. All barristers are under a duty to report serious misconduct whether against themselves or others to the BSB. Whether or not misconduct is serious misconduct is a matter of judgement, which will depend on the particular circumstances. Bar Council Policy clearly states that not all instances of harassment are equal, and each should be dealt with appropriately, pragmatically and proportionately.

20. At the conclusion of any informal or formal complaints process the barristers involved will need to consider their obligation to report serious misconduct; in the event they do not consider that the behaviour complained of constituted serious misconduct they shall make a written record as to how they reached this decision. The BSB guidance current at the time of the issue should be considered before a decision is made as to whether a report to the BSB should be made.

21. The person making the report and the person targeted by the behaviour (if different) shall be kept informed by the EDO of action taken as regards the other individual. They shall, unless clearly inappropriate, be asked to provide feedback at a later stage as to how their concern was handled and addressed. Clear written records shall be kept at each stage

of the process set out from paragraphs 8 to 21. Those records shall be retained confidentially by the EDO and in conformity with the rules governing data protection.

22. This policy will be kept under review in the light inter alia of the feedback referred to above.

### Confidentiality

23. Chambers recognise that a recipient of harassment may find it difficult to come forward with a complaint and they understand that recipients and alleged harassers may be particularly concerned about confidentiality and the effect that a complaint may have on career advancement. To protect the interests of the complainant, the person complained against, and any others who may report or be witnesses to incidents of harassment, confidentiality will be maintained throughout any investigatory process to the extent that this is practical and appropriate under the circumstances. However, Chambers has a duty to ensure that harassment does not re-occur. All records of complaints, including notes of meetings, interviews, results of investigations and other relevant material will be kept confidential by Chambers except where disclosure is required for disciplinary or other remedial processes.

### Victimisation

24. Chambers is committed to ensuring that no one who brings forward a harassment concern in good faith is subject to any form of reprisal. Any victimisation of a complainant, witness or anyone else involved in the investigation of a complaint will be viewed as a disciplinary matter. The raising of such a complaint will not have any adverse consequences for the complainant, particularly in relation to tenancy and promotion decisions.

## **Pupil Supervisors**

25. Pupillage is a period of professional training and chambers regard it as inappropriate for a sexual relationship to develop between a pupil supervisor, any other member or employee of chambers and a pupil. No member of Chambers may participate in decisions concerning a pupil where they are or have been in a relationship with that pupil.

## **Further Avenues of Redress for an Individual Experiencing Harassment, Discrimination or Bullying**

26. In addition to the Chambers' procedures there are a number of other avenues of redress. These include:

- If a complaint is not resolved within Chambers a further avenue of appeal to an external independent individual may be considered. The individual should have experience in equal opportunities
- raise a complaint with the relevant Inns Students' Officer about a sponsor or pupil supervisor. The Inns' complaints process will determine the outcome of such complaints;
- complaint to the Bar Council's Professional Conduct and Complaints Committee where the alleged harasser is a barrister;
- take action in the county court or employment tribunal alleging harassment as a form of unlawful direct discrimination;
- report this matter to the police where an act of harassment is a criminal offence e.g. assault or intentional harassment.
- through the Bar Council's Equality and Diversity Advisers seek the assistance of the Bar Council's Mediation Panel members. Their role is to advise the complainant and, with his or her permission, seek to mediate between the complainant and the alleged harasser. The Panel can be approached in confidence and will aim to achieve an end to the conduct complained of without necessarily finding fault or blame and without the imposition of sanctions.

27. The Bar Council's Equality and Diversity Advisers are available at the Bar Council to offer advice **in confidence** to any recipient of harassment or to any member of chambers responding to a complaint of harassment. The confidential helpline number ( a direct dial number ) is 0207 611 1310

Note: This policy draws upon various sources, including:

- BSB Model Anti\_Harassment Policy for Chambers (at Appendix 1 to the Bar Council Guide: Tackling Sexual Harassment: Information for Chambers);
- Bar Council Model Policy (at Appendix 2 to the above Guide)
- Bar Council Equality and Diversity Guide: Discrimination, Harassment, Bullying and Inappropriate Behaviours – Information for Barristers
- Supporting Information to BSB Handbook Equality Rules (produced by BSB)

## **G. INTERNAL COMPLAINTS AND GRIEVANCES**

### **Scope of Procedure**

1. This procedure covers: members of Chambers; pupils of Chambers; mini-pupils. This procedure is applicable to any complaint, grievance or dispute including but not limited to complaints of unfair discrimination or harassment. Complaints from members of the public concerning barristers or the employees of barristers, will be dealt with in accordance with PCCC requirements (see Bar Council website).

### **Statement of Policy**

2. These Chambers are committed to providing a working environment in which all individuals including members, pupils, mini-pupils, employees, clients and the public are

treated with dignity, respect and fairness. No one will be victimised or suffer a detriment because they raise a complaint or grievance in good faith under this procedure<sup>1</sup>.

### **Notification of Procedure**

3. A copy of the procedure will be given to all members, pupils and mini-pupils in Chambers and a copy kept in the Chambers' administration manual.

### **Confidentiality**

4. Confidentiality will be maintained as far as possible and appropriate in the circumstances.

### **Formal Complaints – Time Scales**

5. Complaints will be dealt with promptly in accordance with this procedure. A formal complaint must be made as soon as reasonably possible and in any event within six months of the act being complained of, or within six months of the end of any informal action taken, save in exceptional circumstances. A formal complaint, which should be made in writing, will be acknowledged by the Head of Chambers within seven days of receipt. Any investigation should be completed within 28 days of receipt, unless there are good reasons for delay. Investigations should be conducted in accordance with standards of natural justice. Where possible, two members of Chambers not directly involved in the complaint should undertake the investigation. All parties to the complaint should be permitted to be accompanied by a colleague at any hearing.

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<sup>1</sup> **Discrimination by Victimisation** – It is unlawful to treat a person less favourably because he or she has brought proceedings under the Equality Act 2010, given evidence or information relating to proceedings, or has alleged that discrimination has occurred.

## **Remedial Action**

6. The complainant will receive a written response on the outcome of the complaint with a clear indication of the action Chambers will take, if the complaint has been upheld. Solutions which rely on changes to working arrangements which may unreasonably disadvantage the complainant should be avoided as this could amount to victimisation.

7. If the formal grievance or complaint is found to have substance appropriate steps in the circumstances will be taken to remedy the problem. A brief confidential report on all formal complaints and on the outcome will be made to the Head of Chambers and records will be retained for a period of one year from the conclusion of the case with a discretion to keep longer if necessary<sup>2</sup>.

## **Informal Procedures**

8. Complaints or grievances are more easily resolved if dealt with at an early stage. Individuals with complaints or grievances are recommended to contact the Head of Chambers who will, as far as possible, give confidential advice and assistance.

## **Complaints or Grievances by Pupils**

9. Pupils are encouraged to discuss any grievances which they may have during their pupillage with their pupil-supervisors.

10. In some cases this may not be possible or appropriate and the pupil should then approach the Head of Chambers informally. If informal resolution of the complaint is not possible, the pupil should set out the complaint in writing to the Head of Chambers for investigation.

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<sup>2</sup> If a complaint is not resolved within chambers a further avenue of appeal to an external, independent individual may be considered. Where the complaint concerns equal opportunities matters the individual should have relevant expertise.

### **Complaints or Grievances by Tenants**

11. If a member of chambers has a complaint about a clerking matter, in the first instance he/she should attempt to resolve it with the senior clerk or seek the assistance of the Head of Chambers. Any other issue may be raised with the Head of Chambers/or Management Committee. If resolution of the complaint is not possible through these informal channels, the complaint should be referred in writing to the Head of Chambers for investigation.

### **Complaints or Grievances by Chambers Staff**

12. The rights and procedures relating to Chambers Staff in respect of complaints and grievances may be found in the Staff Handbook.

### **Equality Act 2010**

13. Where a barrister, pupil or chambers employee is disabled there is a duty to consider a reasonable adjustment to this policy. A request for a reasonable adjustment should be made to the nominated members of Chambers or to the Chamber's Equality Officer.



## H. SERVICE PROVISION (DISABLED CLIENTS)

1. Chambers is committed to making reasonable adjustments in order to remove or reduce substantial disadvantage for disabled people working with chambers or receiving legal services. This policy covers all employees of chambers, barristers, clerks, pupils, mini-pupils and visitors to chambers.

### **Circulation**

2. This policy is circulated to all members, staff, pupils, clerks and those who are required to read and understand it.

### **Definition of disability**

3. For the purposes of this policy the definition of disability follows that set out in the Equality Act 2010 s.6. A person is therefore disabled if s/he has a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities. “Substantial” means more than minor or trivial and “long term” means 12 months or more.

### **Types of reasonable adjustment**

4. A reasonable adjustment is any practicable adjustment made to a BSB physical feature, provision, criterion or practice which removes or reduces substantial disadvantage in accessing that service to a disabled person. This policy does not provide an exhaustive list of the reasonable adjustments that chambers will make for staff, barristers, pupils or visitors however the following types of adjustment that may be made are listed below:
- (a) Provision of information in alternative formats (e.g. large print, Braille etc)
  - (b) Paid leave for disabled employees of chambers
  - (c) Provision of auxiliary aids e.g. induction loops
  - (d) Provision of accessible conference room facilities
  - (e) Provision of a reader or interpreter
  - (f) Rest / comfort breaks in meetings
  - (g) Extension of time limits where lawful

## **Staff, barristers and others in chambers**

5. Staff or barristers with specific requirements should make requests to (insert name and job title) for reasonable adjustment decisions. All requests for reasonable adjustments will be considered on a case by case basis with the advice and assistance of chambers' Equality and Diversity Officer and where it is not possible to make the adjustment requested (Name of chambers) will discuss viable alternatives with the applicant.

6. Head of Chambers is responsible for considering whether or not disabled staff, barristers or pupils require assistance during an emergency evacuation and if so whether or not a personal emergency evacuation plan is required for the individual/s concerned. If so, the plan will be developed in partnership with the individual concerned in order to ensure that adjustments to the emergency evacuation procedure may be made.

## **Visitors to Chambers**

7. Barristers are responsible for considering reasonable adjustment requests for their visitors. They are also responsible for anticipating any likely reasonable adjustments that will need to be made for visitors whom they know to be disabled and are likely to require assistance. Visitor requests for specific reasonable adjustments may be made by contacting (insert name and contact details).

8. Clients are always welcome in Chambers but meetings and conferences may be arranged elsewhere to suit the needs of the case, and the client. Arrangements for meetings may be made at solicitors, offices or at convenient venue to the client. Chambers can also arrange conference facilities providing disabled access and amenities.

Booking arrangements for the Lawson Reading Room, Inner temple and for disabled car drivers or passengers

9. It is possible to arrange for a conference to take place in the Lawson Reading room in Inner Temple which has disabled access, a disabled lavatory and lifts. The booking needs to be made 24 hours before the room is required. A parking permit can be obtained, free of charge, from the Inn.

**Pupils and Tenants**

10. Disability is a protected characteristic pursuant to the Equality Act 2010. Chambers will not discriminate against any pupil or tenant on the grounds of disability including any discrimination arising from disability.

**Costs of making reasonable adjustments**

11. Cost of making reasonable adjustments. In no circumstances will Chambers pass on the cost of a reasonable adjustment to a disabled person.

**Monitoring and review**

12. This policy is reviewed by chambers' Equality and Diversity Officer every two years.