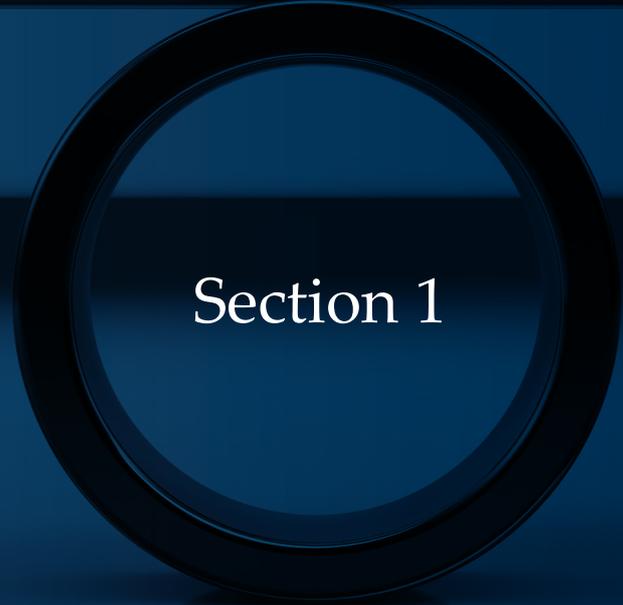


The Bar Council's Fair Recruitment Guide



Section 1

A best practice guide for the Bar



The Bar Council

Introduction

All chambers and BSB entities are looking for the brightest and the best to join their organisations. This requires finding effective ways of identifying talent and potential, ensuring unfairness and bias don't get in the way. Designing an effective recruitment process, training those shortlisting and interviewing, collecting and properly analysing equality monitoring information and consistently reviewing the outcomes protects against bias and unfairness, making it more likely that genuinely talented people will be recruited.

In 2020 the Bar Standards Board reported that women make up 38% of the Bar overall, and over half (54%) of new entrants to the Bar. Black, Asian and minority ethnic barristers represent 13.6% of the Bar, and 6% of barristers report they have a disability. Barristers are disproportionately privately educated and there are lower than average levels of barristers who have primary childcare responsibility.

Research into differential outcomes for Bar Professional Training Course (BPTC) graduates found that even once other variables are controlled for, ethnicity has a significant predictive effect on whether BPTC graduates obtain pupillage. Black, Asian and ethnic minority BPTC graduates are roughly half as likely to obtain pupillage as white graduates with similar prior educational attainment.

Socio-economic status (using parental degree as a proxy) also has a significant predictive effect on whether BPTC graduates obtain pupillage. BPTC graduates with no parent with a degree are around two thirds as likely as graduates with at least one parent with a degree to obtain pupillage.

A lot of work has been done across the profession to improve access. Fair recruitment training is now mandatory for everyone involved in recruitment. The standardisation of the process, including the requirement to advertise all pupillages on the Bar Council's Pupillage Gateway and adhere to the common recruitment timetable, is having an impact on the transparency and accessibility of recruitment into the profession.

The BSB has detailed rules on how BSB regulated chambers and entities, and other Authorised Education and Training Organisations (AETOs) should recruit. Reading and following this guidance, which can be supplemented with the Bar Council's Fair Recruitment and Selection training, will help ensure compliance with these rules.

The same broad principles should be applied to any recruitment process within chambers and other regulated entities, including the recruitment of mini-pupils, pupils, starter tenants, established practitioners and chambers professionals.

This guide covers the four key principles of fair and effective selection and how bias and discrimination can be avoided. It provides practical guidance on every stage of the recruitment process: from determining the selection criteria to

shortlisting; interviewing and assessing using work samples to making an offer; and supplying effective feedback. It suggests practical steps that chambers and regulated entities can take to monitor and evaluate recruitment and selection processes.

This guide is split in to four sections

Section 1 – The principles of fair recruitment. This section is applicable to anyone involved with recruitment – from those who administer the process through to those participating in interviews or voting on tenancy.

Section 2 – Recruitment process design. This section is designed to assist members of recruitment and pupillage committees responsible for determining the recruitment process.

Section 3 – Shortlisting, interviewing and selection. This section is applicable to everyone involved in the selection process, including those responsible for shortlisting, assessing and interviewing.

Section 4 – Templates and samples. This section includes template application forms, shortlisting scoring sheets, exercises and work samples, interview record forms, feedback and equal opportunities monitoring forms.

Further information and support

Further information on best practice in recruitment and on recruitment skills training courses can be obtained from the **Bar Council's website** and on the **Bar Council's Ethics and Practice Hub**.

Chambers and regulated entities can also receive confidential guidance and support through the Bar Council's Equality and Diversity helpline on **0207 611 1426**.

The helpline can also be contacted using the email address **equality@barcouncil.org.uk**

Contents

This section is applicable to anyone involved with recruitment – from those who administer the process through to members participating in interviews or voting on tenancy.

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Fair recruitment rules at the Bar

There are rules which ensure chambers and BSB entities achieve best practice and fairness in recruitment and selection at the Bar. These rules prevent discrimination and ensure the best candidates from the widest pool of talent are recruited.

This guide will assist chambers or BSB entities to meet recruitment and training rules in the **BSB Handbook** and the **BSB Bar Qualification Manual**.

i The Rules

This guide contains the essential content for training courses that meet the Handbook Training Rules **rC110.3.b, c and d**.

These rules state that chambers and regulated entities must take reasonable steps to ensure that:

- There is an equality and diversity policy and plan in force
- Everyone involved in recruitment is trained (except in exceptional circumstances)
- Objective and fair criteria are used in all recruitment and selection processes
- Regular reviews are carried out to ensure compliance

Throughout this guide, BSB rules begin with the letters RC and guidance begins with the letters GC, followed by the relevant number in the BSB handbook.

Training definition

The BSB's guide to **Continuing Professional Development (CPD)** for Established Practitioners suggests that barristers whose role within chambers or any regulated entity relates to recruitment can undertake CPD to ensure that they are competent and able to achieve compliance with legal and regulatory obligations.

GC142 training means any course of study covering all the following areas:

- a) Fair and effective selection & avoiding unconscious bias
- b) Attraction and advertising
- c) Application processes
- d) Shortlisting skills
- e) Interviewing skills
- f) Assessment and making a selection decision
- g) Monitoring and evaluation

Training should ideally be undertaken via classroom sessions. However, it is also permissible in the following ways:

- Online sessions
- Private study of relevant materials such as the Bar Council's Fair Recruitment Guide
- Completion of CPD covering fair recruitment and selection processes.

Equality monitoring

Your chambers or BSB entity must:

- Conduct a regular review of its policy on equality and diversity and of its implementation in order to ensure that it complies with the requirements of **RC110**
- Take any appropriate remedial action identified in the light of that review

Subject to **RC110.3.h** chambers or BSB entities must regularly review:

- The number and percentages of its workforce from different groups
- Applications to become a member of its workforce
- In the case of chambers, the allocation of unassigned work

- The reviews referred to in **RC110.3.f** above include:
 - Collecting and analysing data broken down by race, disability and gender
 - Investigating the reasons for any disparities in that data; and
 - Taking appropriate remedial action

The requirement to collect the information referred to in **RC110.3.g** does not apply to the extent that the people referred to in **RC110.3.f.i** and **RC110.2.f.ii** refuse to disclose it.

RC89 states self-employed barristers must ensure that:

- chambers is administered competently and efficiently; and
- proper arrangements are made for dealing with pupils and pupillage.

Authorised Education and Training Organisations (AETOs)

New **Bar Qualification Rules** came into force in April 2019. The rules have been designed to ensure that training to become a barrister is more accessible, affordable and flexible whilst maintaining the high standards of entry expected at the Bar. Under the rules all organisations that provide training, including pupillages, must be approved as Authorised Education and Training Organisations (AETOs).

With the introduction of the new rules, the BSB developed a new regulatory framework capturing all the relevant information for those interested in the qualification process and to explain the requirements of becoming a barrister. This new framework is set out in detail in the Bar Qualification Manual.

To coincide with the introduction of the new Bar Qualification Rules, the BSB published the **Authorisation Framework** (incorporating the Curriculum and Assessment Strategy).

Under the new rules, all organisations seeking to offer one or more components of training for the Bar must apply to become an AETO. This includes pupillage training providers e.g. chambers, BSB entities and other organisations (including solicitors' firms, commercial organisations, government bodies and not-for-profit organisations).



The principles of fair and effective recruitment

The four principles of fair recruitment

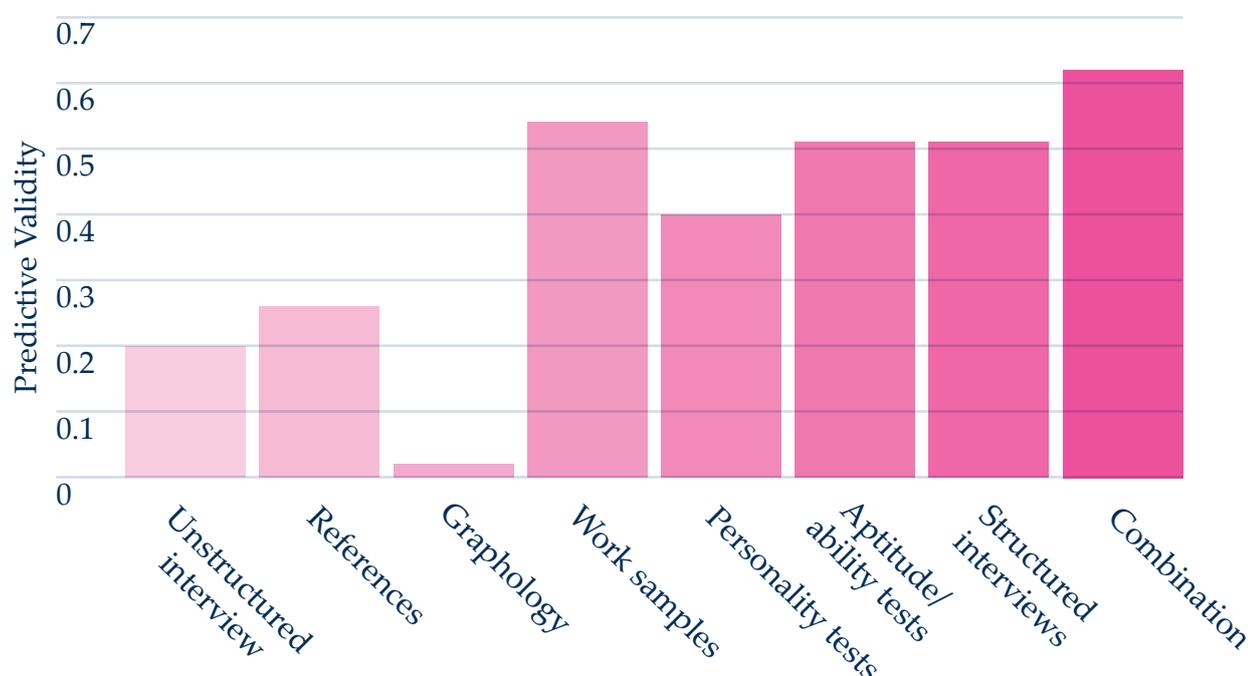
Principle 1 – reliability

To be reliable, any assessment method must produce consistent results over time, and across different assessors.

Principle 2 – validity

Whilst an assessment method may produce consistent results, those results must also be valid. Validity is concerned with the success of the chosen assessment method at measuring what chambers or BSB entities set out in the criteria for the role.

Figure 1 – Predictive validity of different assessment methods[†]



Assessment methods differ in their success at measuring candidates' suitability for a post (predictive validity) and need to be chosen carefully. Figure 1 shows typical levels of validity for common assessment methods used in Europe. However, it should be noted that the actual predictive validity that can be achieved will vary according to how well a given method reflects the most important skills required by the job.

Principle 3 - objectivity

Objectivity is concerned with ensuring that your processes, selection methods and panel members are free from bias or unfair discrimination. Chambers and BSB entities should review their recruitment processes for any bias or discrimination and keep those processes under review.

Take action

In order to have confidence in the objectivity of the recruitment process, ensure that:

- Everyone involved in recruitment has received recent training in fair recruitment.
- Panel members follow a consistent and thorough approach to assessing and marking/rating.
- All candidates undertake the same selection exercises under the same conditions (reasonable adjustments may be needed for candidates with a disability e.g. increased time or the provision of test materials in accessible formats – see Section 1, Page 20: Reasonable Adjustments).
- Anyone involved in shortlisting and interviews applies the selection criteria consistently to all candidates.
- Recruiting panels do not discuss their views about candidates until they have individually rated the candidate. Views on candidates should be discussed at the panel rating session. The exception to this is if the panel are discussing ratings solely to ensure consistency between panel members.
- Selection decisions are not made until after all assessments have been marked.
- Diversity monitoring data on each stage of the selection process is reviewed to identify discrepancies in the proportions of different groups of applicants that are successful and unsuccessful. The reasons for discrepancies should be investigated and action taken to remove any unfairness in the process if necessary.

Tip: Think about the four principles at every stage of the process, testing each aspect against them.

Principle 4 – transparency

Transparency refers to the entire selection process and how clear, unambiguous, transparent and open the process is.

Authorisation framework mandatory criteria 37.3 requires transparency in order to promote diversity and inclusion.

Discussion with pupils indicates that transparency is important to them when selecting their 'chambers of choice'. In particular, pupils value transparency in relation to the criteria chambers and BSB entities use in their selection processes, how they will be assessed, what the pupillage will entail and in relation to remuneration.

Transparent processes and selection methods do not try to catch out a candidate. Instead, they provide all the information that a candidate (and recruiting panel) needs in order to perform to the best of their ability. It is good practice to tell candidates what to expect on the day, what criteria they will be measured against and how you will be measuring that. If, for example, part of the selection process involves an 'advocacy exercise', a transparent process would inform candidates that this is what will be happening. With this knowledge, candidates are more likely to leave feeling that the selection process was fair and effective, regardless of how they performed.

Transparency example

In a focus group about the pupillage recruitment process, some candidates from under-represented groups discussed how one chambers gave them a 10 minute first round interview and did not invite them back for a second interview. They assumed they had been invited to make up the numbers or even to help chambers meet a diversity target, and that if there had been a genuine prospect for second interview they would have been given longer.

In fact, all first interviews at that chambers were kept to 10 minutes as they were part of the final stage of shortlisting, but because of a lack of transparency about the process, candidates were left to draw their own, incorrect conclusions.

✔ Ensuring fair selection

To achieve reliability, validity, objectivity and transparency in recruitment processes, chambers and BSB entities should:

- Ensure everyone involved in recruitment has received recent training in all the topics covered in this Guide, in particular Section 1, and in equal opportunities and diversity. Training should be repeated every three years to stay up to date on emerging issues.
- Ensure all those involved in shortlisting, interviewing or assessing receive training on and are familiar with Sections 1, 2 and 3 of this Guide, including the principles of fair and effective selection, avoiding bias in recruitment, shortlisting, interviewing, evaluation and selection decision.
- Set clear selection criteria based on the skills/competencies required for the position.
- Consider the best ways to measure each criterion (e.g. oral communication skills are best measured at interview or through an oral presentation test, rather than a written test).
- Ensure the selection process (e.g. application form/interview work sample) is capable of testing all the relevant criteria.
- Ensure that marking of each candidate is consistent and avoids unconscious biases. Consider whether some candidate information, such as name of school or university institution attended, should not be passed onto selectors if it is not relevant to the criteria.
- Ensure panel members make accurate notes of what a candidate says and does during interviews, including any role plays or presentations, and that scores given for each criterion relate to evidence obtained from the selection process.
- Encourage panel members to avoid reaching conclusions until all information relevant to the selection criteria has been evaluated.

Mandatory criteria 37.3 requires that AETOs must demonstrate a commitment to open and fair recruitment. AETOs must also retain data on recruitment of pupils (advertisements, application process, selection criteria, assessor records) for five years.

The BSB has published guidance for providers of work-based learning components which includes pupillages.

More information about the rules for AETOs can be found on the **BSB's website**

⁴Reference: Schmidt, FL & Hunter, JE 1998, 'The Validity and Utility of Selection Methods in Personnel Psychology: Practical and Theoretical Implications of 85 Years of Research Findings', *Psychological Bulletin*, vol. 124, no. 2, pp. 262-274).

Discrimination in recruitment

The law covering discrimination in recruitment is covered in the Equality Act 2010 (EA 2010). It's unlawful for chambers or any employer to treat an individual less favourably because of a "protected characteristic".

The legislation covers the entire working relationship, including the pre-employment selection stage, pupillage and tenancy. The provisions covering barristers are found principally in sections 47 and 48 of the EA 2010, although there is a provision relating to positive action in respect of barristers and advocates in sections 158 and 159.

i Protected characteristics

It is unlawful to discriminate against someone because of a protected characteristic. The protected characteristics are:

- **Race** – Encompassing race, colour, and nationality (including citizenship), and ethnic or national origins.
- **Sex** – Male or female.
- **Pregnancy and maternity** – Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth and is linked to maternity leave and includes breastfeeding.
- **Gender reassignment** – The process of transitioning from one gender to another.
- **Sexual orientation** – Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.
- **Marriage and civil partnership** – Covering unions between a man and a woman or between a same-sex couple.
- **Disability** – A person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- **Age** – A person belonging to a specific age (e.g. 32 year-olds) or a range of ages (e.g. 18 to 30 year-olds).
- **Religion or belief** – Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief.

Take action

In the BSB Handbook, barristers are also bound by a Core Duty not to discriminate:

- **CD8** – You must not discriminate unlawfully against any person
- **RC12** – You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.

Forms of discrimination

Direct discrimination

Direct discrimination occurs when chambers or BSB entities treat an individual less favourably because of a protected characteristic.

Direct discrimination cannot be justified, with the exception of certain types of age and sex discrimination linked to genuine occupational requirements (GORs). These are very restrictive and would be unlikely to occur in recruitment to a chambers or BSB entity.

Example

- Restricting applications for pupillage to men – this would be direct discrimination on the grounds of sex.
- A requirement that only non-UK nationals must provide evidence of competency in the English language – this would be direct discrimination on the grounds of race.
- Restricting pupillage to people under 30 years old - this would be direct discrimination on the grounds of age.

Discrimination by association

This is discrimination against someone because of their association with another person who possesses a protected characteristic.

Example

- Rejecting an applicant for pupillage because they are a carer for a disabled partner or family member – this would be direct discrimination on the grounds of disability.
- Questioning an applicant's likelihood of staying in the role for the long-term because their partner is a foreign national – this would be direct discrimination on the grounds of race.

Perceptive discrimination

This is direct discrimination against an individual because others think the individual possesses a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

Example

- Expressing concern about someone's ability to fit in because you assume they're gay – this would be direct discrimination on the grounds of sexual orientation.
- Not accepting a new tenant because it is assumed they have a disability – this would be direct discrimination on the grounds of disability.

Indirect discrimination

Indirect discrimination occurs when an apparently neutral provision, criterion, or practice is applied that leads to people with a protected characteristic being disproportionately adversely affected than those without that protected characteristic.

Unlike direct discrimination, indirect discrimination can be justified if the provision, criterion or practice can be shown to be a proportionate means of achieving a legitimate aim.

Example

- Having a criteria that favours degrees from UK universities – this could indirectly discriminate against a candidate on the grounds of race as someone not brought up in the UK may be less likely to meet that criteria.
- Including a social event at a pub as an informal part of the recruitment process – this could indirectly discriminate on the grounds of religion or belief because someone's religion may make it hard for them to socialise around alcohol.

Victimisation

Victimisation is treating someone less favourably because they have made a complaint of discrimination or supported someone else in making a complaint of discrimination under the EA 2010.

Example

- An applicant for tenancy being briefed against in advance of an all-chambers vote because it is known they raised a sexual harassment complaint against a colleague in a previous set – this would constitute victimisation and discrimination on the grounds of sex.
- A candidate having their pupillage offer withdrawn because a reference referred to them claiming disability discrimination when the reasonable adjustments they had requested were refused – this would constitute victimisation and discrimination on the grounds of disability.

The duty to make reasonable adjustments

Barristers have a positive duty to make a reasonable adjustment for disabled people where a provision, criterion, physical feature or practice puts a disabled person at a substantial disadvantage in comparison with non-disabled people. The duty also covers the requirement to provide auxiliary aids for disabled people where reasonable.

Example

- Providing a visually impaired applicant with an application form in an accessible format
- Providing extra time in a written test to a candidate who is dyslexic.

There is more information about disabled applicants and reasonable adjustments in Section 1, Page 20: Reasonable Adjustments

More information

The Bar Council's Ethics & Practice Hub contains a lot of information about equality & diversity and discrimination

www.barcouncilethics.co.uk/subject/equality-diversity

The Equality and Human Rights Commission website contains up to date information about the EA 2010, case law and guidance for employers and individuals

www.equalityhumanrights.com/en/equality-act

For advice and support on making reasonable adjustments for disabled applicants as part of the recruitment process or about anything else in this section contact the Bar Council's Equality and Diversity helpline:

Telephone: **0207 611 1426**

Email: equality@barcouncil.org.uk

Bias in recruitment

Bias describes a tendency or preference towards or against a particular perspective or group that interferes with the ability to be impartial or objective.

Unconscious or subconscious bias

Despite years of legislation outlawing discrimination and initiatives to promote equality, prejudice is still a significant issue in the workplace. This may be because unconscious or subconscious bias, often formed in early childhood, could have an influence on decision making. Some biases are conscious; we are aware we have them and are aware when we display biased opinions. Other biases are unconscious; we are not aware that we have them and they can lead us to draw inferences that are inaccurate and unfair.

In a workplace these biases can be 'for' as well as 'against' particular characteristics, behaviours or groups. They are rarely explicit or deliberately discriminatory but are hidden and triggered automatically. Implicit association, conscious and unconscious bias about people based on their age, gender, race, sexual orientation, religion or belief, disability and maternity or pregnancy status can influence recruitment decision making and may act as a barrier to diversity

i Common biases

Common biases which can impact on recruitment decisions include:

Affinity bias – the tendency to warm up to people who are like you or familiar to you. In recruitment this leads to unfairly favouring some applicants and can mean diverse applicants are disadvantaged.

Halo effect – the tendency to think that everything about a person is good simply because you like them, or they have done something else which is good. The converse of this is the horns effect which assumes everything about a candidate is bad if they have made one error. Both these biases

are unhelpful when recruiters should be making an assessment on a candidate's overall application.

Perception bias – the tendency to believe one thing about a group of people based on stereotypes and assumptions, making it impossible to be objective about an individual from that group. Unchecked, this bias can quickly lead to discriminatory decision making.

Confirmation bias – the tendency to seek to confirm your pre-existing ideas and assumptions about an individual or group of people. This is particularly challenging to fair recruitment as it inhibits objective decision making.

Group think – the tendency, often unconscious, to try to fit into an existing culture; mimicking others and holding back thoughts or opinions. Group think encourages recruitment panels to quickly coalesce around a candidate and then ignore evidence or opinions which contradict their decision.

Tackling bias

Just because biases are often unconscious, it doesn't mean you can't take steps to prevent bias influencing the recruitment process. It is possible to tackle bias by:

- Being aware of it. The first step to addressing bias is to acknowledge it. Once you acknowledge your own biases and discuss potential for biases with others on the recruitment panel you'll be better placed to see them in yourself and others.
- Being prepared to confront prejudiced behaviours and beliefs when they occur.
- Ensuring everyone involved in recruitment has attended an equality and diversity and fair recruitment training course – this puts discrimination and bias front of mind.
- Formalising decision-making processes as set out in this guide – this reduces opportunities for subjective or biased decision making and enables you to track if it happens.
- Involving others in decision making.
- Making notes if there is likely to be a delay between gathering information and making a decision. The effect of subconscious bias may be greater in reconstructing events from memory.

Tip: Instigate a conversation about unconscious bias with the recruitment panel before you start the shortlisting or selection process – this will encourage everyone to put it at the front of their minds before they make decisions.

Reasonable adjustments and disabled applicants

In 2019 there were over 500 barristers with reported disabilities practicing at the Bar – 3.1% of the whole Bar. This is likely to be an underestimate as there are still low levels of disclosure, it is estimated that around 13% of the employed working population has a declared disability.

There has been a gradual increase in the number of disabled barristers, and it is clear that disability doesn't have to prevent someone from having a successful career at the Bar. But significant barriers remain for disabled people who wish to become a barrister, barriers which are sometimes physical but are much more often attitudinal. Stereotypes about disabled people's ability and suitability for the Bar, a reluctance to make even small changes which could open up the Bar to many more disabled barristers, and outdated beliefs that disability would prevent someone from being an excellent advocate still prevail.

Changing the way that we recruit barristers, to ensure disabled people have the opportunity to work at the Bar is essential. Everyone involved in recruitment should understand their obligations towards disabled applicants and should examine the process and their own biases to ensure disabled applicants are not disadvantaged at any point in the recruitment process.

Types of disability

A disability means a physical or a mental condition which has a substantial and long-term impact on someone's ability to do normal day to day activities. Disability is much broader than physical impairments and wheelchair access.

Someone is classed as having a disability if they have a progressive condition like HIV, cancer or multiple sclerosis, even if they are currently able to carry out normal day to day activities.

Impairments can include conditions ranging from myalgic encephalomyelitis (ME), diabetes and arthritis to depression, schizophrenia, phobias, personality disorders, autism, dyslexia, learning disabilities and injury to the brain; those affecting body organs such as asthma and heart disease; what doctors call musculoskeletal conditions – injury, damage and disorders which affect bones, muscles, joints, ligaments, tendons and nerves; and conditions/effects produced

by injury to the body. (see ACAS: [Disability Discrimination – key points for the workplace](#)).

Previous health conditions may also be classed as a disability. For example, if someone had a mental health condition in the past which lasted for over 12 months, but they have now recovered, they are still protected from discrimination because of that disability.

Disclosing disability

There is no requirement on someone to disclose their disability and not every disability is immediately apparent. Where someone's disability is not immediately apparent, they may be concerned about what other people think and reluctant to disclose their disability. Whether or not someone discloses their disability, and at what stage of recruitment or professional life, is a personal choice which should be respected.

Being very clear in adverts, on your website and on all your recruitment materials that you are inclusive of disabled barristers, that reasonable adjustments will be made and will not impact on recruitment decision making will reassure candidates.

The Equality Act – reasonable adjustments

The Equality Act 2010 places a positive duty on individual barristers, chambers and clerks to make 'reasonable adjustments' to prevent a provision, criterion or practice, or physical feature of premises, placing disabled people at a substantial disadvantage in comparison with non-disabled people. This duty applies to the recruitment of a disabled pupil, tenant or employee. Whether an adjustment is reasonable depends on:

- The effectiveness of the adjustment in overcoming the disability.
- How practicable the adjustment is.
- The cost of the adjustment. Chambers own resources are relevant but disabled people can also get support from the [Access to Work](#) scheme.

The types of adjustments required will depend on the individual's disability. It is therefore strongly recommended that chambers initially consult the individual about their needs and how these can be best addressed. The following are examples of possible reasonable adjustments:

- Alterations to the physical features of premises such as widening of doors to enable wheelchair entry, lift installation or changing of colour schemes that may have an impact on visibility.
- Purchase of specialist equipment such as screen reading computer software or a special chair.
- Re-allocation of tasks.

- Relocation of the workstation.
- Provision of an assistant or reader.
- Alteration of working hours.

Requesting a reasonable adjustment

It should be clear on the application form how someone can request a reasonable adjustment. The process for receiving and actioning requests should be separate from the recruitment process so candidates are reassured that their disability won't impact on recruitment decision making.

The same person who administrates the Equality Monitoring forms should manage requests for reasonable adjustments, and where possible these should be made in advance and without the knowledge of the shortlist or interview panel.

i Dyslexia – disability in recruitment

It is estimated that 10% of the population has dyslexia, a learning difficulty that primarily affects the skills involved in accurate and fluent word reading and spelling. It is very likely that chambers will get applicants with dyslexia who will request reasonable adjustments to the recruitment process. Planning for this in advance will be more efficient and send a clear message that you are inclusive of disabled barristers.

Adjustments can include:

- Ensuring application forms are clear and clearly set out.
- Instructions or guidance notes on how to complete the application form and what, if any, supporting documentation is required should be written in clear and direct language.
- In first consideration/paper sift stage spelling or typographical errors should be disregarded.
- Using clear direct questions in interviews and avoiding multi-part questions.
- Allowing candidates additional time to review materials and produce written work – 25% extra time is usual.

The fundamental principle when making reasonable adjustments is always to ask the applicant what they need. The applicant is the expert in how their impairment affects them and so is in the best position to assist you to make reasonable adjustments.

The Bar Council Ethics & Practice Hub includes detailed guidance on how to support dyslexic barristers.

It is important to remember that questions or discussions about a person's disability, including what reasonable adjustments they might need as a pupil or tenant, should not take place during an interview or at any stage before an offer of pupillage is made. Once the offer is made, chambers can consider what reasonable adjustments are necessary.

Withdrawing an offer of employment or written agreement

In some instances, chambers may conclude that an applicant's disability would make it impossible for them to do the job or that the adjustments required are not reasonable. Chambers should act with caution here, because to withdraw an offer of employment or written agreement on the grounds of disability could be direct discrimination.

It is essential to go through the job description in detail and carefully consider every aspect of the role and if there is an opportunity to make a reasonable adjustment. It is best to do this in collaboration with the candidate and be as transparent as possible about your decision making at every stage.

The Bar Council's Panel of Disability Advisors can provide chambers, BSB entities, disabled pupils and barristers with practical information about appropriate reasonable adjustments in self-employed practice. The Panel can be contacted through the Bar Council's Equality and Diversity Policy Team. Funding towards the cost of adjustments may be available through the Access to Work (see below).

Where an individual's needs are complex and potentially difficult to reasonably accommodate, chambers are advised to obtain an expert assessment from an Occupational Health Specialist. Suitable advisors can be found through [The Society of Occupational Medicine](#).

If it is decided to withdraw an offer, ensure you retain records of the process you went through and your decision making.

[The Government Equalities Office](#) has more information about withdrawing an offer of employment and disability discrimination.

Access to Work

The Access to Work (AtW) programme is a government funded initiative that provides disabled people and the organisations they work for with practical advice and support for extra costs associated with meeting the disabled person's needs.

Typical adjustments funded include specialist equipment to help a disabled person function in the workplace, adaptation to premises, a reader or assistant, or

help with the additional costs of travel to work for people who are unable to use public transport. The application process can take several months and individuals are advised to apply as soon as they receive an offer of tenancy or pupillage. It is important to note that AtW will not make retrospective payments for adjustments already in place.

More information

For more support get in touch with the Bar Council Equality and Diversity helpline

Telephone: 020 7611 1426

Email: equality@barcouncil.org.uk

The Bar Council Ethics & Practice Hub has information about disability at the Bar

www.barcouncilethics.co.uk/subject/supporting-those-with-a-disability/

ACAS provide a lot of information about disability in the workplace

<https://www.acas.org.uk/acas-guide-on-disability-discrimination>

The Equality and Human Rights Commission has information about the law and case studies for organisations and individuals about disability at work

www.equalityhumanrights.com/en/disability-advice-and-guidance

The Business Disability Forum has advice and case studies for workplaces

www.businessdisabilityforum.org.uk/

Tenancy

Whatever the recruitment process – whether it applies to new pupils, tenants, or employees – it has to be fair.

For many chambers, pupillage is, in effect, a year-long recruitment process and the real decision comes when deciding whether to take on a pupil as a new tenant.

If this is the case, chambers and BSB entities should be transparent with pupils from the outset. Pupils should know what assessments they will be required to undertake and the criteria against which they will be assessed. They should know to what extent feedback from their supervisor, satellite supervisors, clients and clerks will be considered when deciding on tenancy. They should also know if an interview will be required.

As more barristers move chambers, there is increasing scrutiny of lateral recruitment, how experienced practitioners are recruited and whether that process is fair.

Advertising tenancy opportunities

It should be made clear in pupillage recruitment materials whether pupillages routinely lead to tenancy. Mandatory criteria 40.1 of the Authorisation Framework for all AETOs requires transparency about progression to tenancy or employment and 45.1 requires transparency about prospects after pupillage. Chambers also tend to have a standard statement on their website that they are interested in hearing from barristers who are thinking of moving chambers who have expertise in the relevant practice area(s).

If chambers are proactively seeking to increase the number of tenants, either because they are expanding or moving into new practice areas, they should follow a fair recruitment process. This means being proactive in promoting opportunities, seeking applications beyond their existing network and being transparent and fair in how they promote opportunities.

Tenancy Committee

For lateral or experienced hires, chambers and BSB entities should have a process which follows the same principles and processes of fair recruitment set out in this guide to ensure fair tenancy decisions. The system should be overseen by a tenancy committee and be transparent.

Tenancy example

XYZ Chambers' recruitment committee reviews applications for new members and conducts interviews. Once a decision has been made, the management committee considers and approves the recruitment committee's recommendations. A seven-day notice is sent to all members, telling them about the decision. If five or more members raised a valid concern in relation to the proposed recruitment, then an Extraordinary Chambers Meeting would be convened to discuss and vote on the decision.

Voting on tenancy

If chambers operate a system of voting on tenancies, there is an obligation to ensure that the process is fair and doesn't discriminate.

Everyone who has a vote should understand the principles of fair recruitment by reading and understanding this guide and should have undertaken fair recruitment training.

Challenges of ensuring voting is fair and free of discrimination include:

- **Chambers culture.** There is a real risk that members vote for the tenants they like or know best and it becomes more of a popularity contest than a recruitment process. If pupillage is a year-long interview, the decision making at the end has to be fair and based on agreed and transparent criteria.
- **Conflicts of interest.** It is essential that members declare any conflicts of interest before a fair vote. If the prospective tenant is a family member or close friend the member shouldn't take part in the ballot.
- **Victimisation.** The Bar is a small world. This presents a risk when whole chambers vote on lateral recruitment of tenants, because they may have heard rumours about a prospective tenant that affects how they vote and how they persuade others to vote. Victimisation occurs when someone is disadvantaged because they have brought a complaint of discrimination under the Equality Act.

- **Veto.** If a unanimous vote is needed in tenancy decisions, any individual member can effectively veto a proposed tenant, possibly unfairly. To guard against this, the process should include a recommendation by the recruitment or management committee. It is then harder for an individual to vote against that proposal without a good reason.

Tenancy example

ABC Chambers was preparing to conduct a vote on a prospective new tenant. A member of chambers was aware that the candidate had raised a complaint of discrimination against a member of their former chambers. The suggestion was made that this showed the prospective tenant was a risky prospect and not a team player. This amounted to victimisation and rendered the vote unfair and potentially challengeable. Chambers decided to abandon the vote to avoid any potential discrimination and the barrister was given tenancy on the recommendation of the tenancy committee.

Third six

A third six is just another term for a short-term contract for barristers who have completed their pupillage, but are yet to secure tenancy or a permanent contract. They may also be called probationary or fixed-term tenancies, or squatting.

The same rules apply when chambers and BSB entities recruit third six pupils – there must be a fair and transparent recruitment process, with vacancies posted on the [Bar Council's Third Six webpage](#).

45.1 of the Authorisation Framework stipulates that AETOs must be transparent if they use a probationary period as part of their tenancy decisions for pupils.

Chambers and BSB entities recruiting third six pupils should refer to the Bar Council's [Third Six Good Practice Guidelines](#).

Checklist

In this section you have learned the principles of fair recruitment, including:

- Fair recruitment rules at the Bar
- The four principles of fair recruitment
- Discrimination and the Equality Act
- Unconscious bias and how to tackle it
- Reasonable adjustments and disabled applicants
- Tenancy decision making

If you would like more information about the principles of fair recruitment process please contact the Bar Council's Equality and Diversity team:

Helpline: **0207 611 1426**

Email: **equality@barcouncil.org.uk**