



The Bar Council's Fair Recruitment Guide

Section 2

A best practice guide for the Bar



The Bar Council

Contents

This section is designed to assist members of recruitment and pupillage committees responsible for designing the recruitment process.

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How to approach designing the process

At the start of any recruitment it is essential to take time to design a process which is fair and, as far as is possible, removes opportunities for bias or discrimination.

Whether you're starting an annual round of pupillage recruitment, deciding on tenancy, bringing in an experienced barrister or recruiting a new staff member, it helps to start by thinking about the role you're seeking to fill and the skills and experience required to fill it, rather than about the type of person you are looking for.

Design the process

Every stage of the recruitment process can be designed to minimise the risk of bias and discrimination.

- **The make-up of the recruitment panel.** All panel members must be trained in fair recruitment and have read this Guide. It is also important to consider the diversity of the panel.
- **The selection criteria.** Identifying talent without bias and designing a competency framework based on objective and fair criteria.
- **Assessment methods.** Designing interviews and work samples which are effective and don't give unfair advantage to some applicants.
- **Attracting and advertising.** Widening the applicant pool, ensuring prospective candidates are aware the opportunity is open to all and that you're seeking a broad range of applicants.
- **The application process.** Designing application forms, collecting equality monitoring information and ensuring that the application process is a transparent one.
- **Thinking about disabled applicants.** Ensuring the process is accessible and that there are systems in place to make reasonable adjustments.
- **Tenancy decisions.** Ensuring a fair and transparent process for making tenancy decisions, whether every member votes or the decision is made by a committee, it should be fair.

Once you have done this, you will be able to complete the job description and person specification which helps applicants understand what you are looking for and whether they are suitable for the role.

A properly designed recruitment process should enable applicants to provide you with the information you need to be able to shortlist and interview the most qualified candidates.

Think ahead

It is useful to think about the later stages of the process at this stage too. That way you will have the information you need to decide how you are going to:

- make an offer, obtain references and provide feedback to unsuccessful candidates;
- handle record keeping and data requirements; and
- deal with the monitoring and evaluating the process.

Overcoming barriers to diverse applications

There are steps every chambers can make to increase the diversity of applicants and their likelihood to succeed in the process.

Applications

- Engaging in outreach activities like pupillage fairs, Bar Placement Week, Pegasus Access Scheme and Bridging the Bar.
- Well promoted mini pupillage programmes with paid expenses.
- Taking care with the tone and placement of advertising.
- Ensuring your website highlights diversity and wellbeing initiatives.

Shortlisting

- Ensure the criteria are transparent and the process is user friendly.
- Think about academic requirements – are some institutions scored higher and do they have diverse graduates?
- Consider removing restrictions on applicants re-applying after one or more unsuccessful attempts to apply.

Selection

- Providing access to interview practice or coaching.
- Thinking about the interview questions, style and tests – a hostile interview style can have an impact on who shines.
- The make-up and consistency of the interview panel(s).
- Understanding of fair recruitment and unconscious bias by recruiting panel.

Identifying talent without bias



Despite laws against discrimination and the ongoing work to ensure equality and increase diversity at the Bar, significant differences in outcomes for different groups seeking careers at the Bar prevail.

Race - BPTC graduates from Black, Asian and ethnically diverse backgrounds are half as likely to obtain pupillage as White graduates with similar prior educational attainment. In 2018/19, 17% of first six pupils were from Black, Asian and ethnically diverse backgrounds, according to BSB data.

Socio-economic status - BPTC graduates with no parent with a degree are around two thirds as likely to obtain pupillage as graduates with at least one parent with a degree, after controlling for other variables. Attendance at either Oxford or Cambridge also has a significant effect on the likelihood of obtaining pupillage

Sex – male applicants gain civil law pupillages more frequently than females, with the reverse being seen for criminal and family law pupillages. This is one of the underlying causes of income disparities between men and women at the Bar.

Tip: These differential outcomes have led some chambers and BSB entities to take a proactive approach to increasing their recruitment of under-represented groups. These interventions include using:

- blind recruitment - where those shortlisting aren't given personal information about the applicants including, for example, their name, details of the educational establishments they attended or their age.
- contextual recruitment – where shortlisting panels are given more information about applicants including details of their socio-economic background, their academic achievements compared against the average attainment of those attending the same school or university and in the same year, and other mitigating circumstances which may help to demonstrate that they are an outstanding candidate when compared to their cohort.
- positive action – as defined in the Equality Act 2010; where chambers may proactively seek applications from under-represented groups or select candidates who are equally qualified and from an under-represented group.

Example

123 Chambers used a contextual recruitment specialist to support with pupillage recruitment. The system allowed candidates to progress to the first-round interviews that would otherwise not have done. Chambers reported that using the system helped to change the mindset of those involved in recruitment and raised their awareness of how academic achievement can be contextualised.

Recruitment panels

The recruitment panel is responsible for agreeing the process, conducting interviews and making recruitment decisions.

Where possible, the recruitment panel should include members from every level in chambers. If you are recruiting for a pupillage position, having someone who has recently completed a pupillage on the panel often provides a useful perspective, but you should also consider including pupil supervisors and senior barristers and/or employees who are responsible for the management of chambers or the BSB entity.

i Choosing the panel

The recruitment panel should:

- Consist of at least three people who can conduct interviews (you will most likely want more people on the panel to support with the process as a whole).
- Be a diverse group of people. This is very important because it:
 - Helps the panel avoid group think, which is a risk when everyone has the same background or experiences;
 - Demonstrates to candidates that diversity is taken seriously; and
 - Increases the likelihood of bias or discrimination being identified and removed from the process.
- Be available to take part in every interview, to ensure consistency of decision making.

Remember: Everyone on the recruitment panel must be trained in fair recruitment and, as a minimum, have read and understood this Fair Recruitment Guide.

Selection criteria

Selection criteria identify the key qualities needed for excellent performance in a specific role. These criteria are sometimes called ‘competencies’, ‘knowledge, skills, experience and abilities’ or ‘role specification criteria’, and they all have the purpose of providing the recruitment panel with a consistent framework against which to assess candidates.

When made available to prospective applicants, selection criteria provide candidates with a clear and transparent indication of what you will be measuring during the selection process. Before drawing up selection criteria, chambers and regulated entities must consider the role being recruited for and the key skills or competencies that are required to perform it well.

Selection criteria form the basis against which information about candidates is gathered and assessed and guide the whole selection process. Determining the criteria is one of the most important parts of the entire selection process. Impeccable shortlisting, skillful interviewing and stringent decision making will be wasted if the criteria against which evidence is gathered and assessed are irrelevant or inappropriate.

The BSB Handbook requires chambers and BSB entities to use objective and fair criteria in their recruitment and selection process. The **BSB’s Professional Statement** defines the competencies required in barristers, and this forms a useful framework for selection criteria. Using this Guide will help chambers to produce selection criteria that are relevant, clear, fair and objective, and this is of central importance to the successful identification of the best candidates.

Developing a competency framework

Competencies are a mixture of knowledge, skills, attitudes and behaviours required for effective performance in a role (e.g. effective communication, influencing skills, or resilience). Essentially, competencies form the basis of the selection criteria.

The Professional Statement describes the knowledge, skills and attributes that all barristers should have on ‘day one’ of practice, defined by relevant competencies.

By the end of training, barristers should be able to demonstrate all the competencies, which are therefore a good place to start when thinking about the selection criteria for pupillage recruitment.

Candidates for pupillage can't be expected to have all the competencies at the start of their pupillage, but they should be able to demonstrate that they have the potential to achieve them to a minimum standard. Your selection criteria can therefore be based around these competencies, and the recruitment process should test the potential of candidates to achieve the standards set out in the Professional Statement on completion of their training.

i The Professional Statement:

Legal knowledge, skills and attributes

- Knowledge and understanding of the key concepts and principles of public and private law.
- Have an awareness of organisations supporting the administration of justice.
- Analytical and evaluative skills.
- Provide clear, concise and accurate advice in writing and orally, and take responsibility for it.
- Negotiate effectively

Practical knowledge, skills and attributes

- English language skills.
- Communication skills, through any appropriate medium and with any audience as required in their work.
- Sound judgement.
- Fully prepared.
- Research skills.

Advocacy

- Clear, concise and accurate written advocacy.
- Persuasive oral advocacy.

Professional standards

- Uphold the reputation of the Bar.
- Comply with regulatory requirements.
- Know how to conduct themselves appropriately.
- Only accept work which they believe they are competent to undertake.

i The Professional Statement (cont.):

Values, characteristics and behaviours

- Act with the utmost integrity and independence at all times in the interests of justice, representing clients with courage, perseverance and fearlessness.
- Be honest in their dealings with others.
- Be aware and active in the pursuit of equality and respect for diversity.
- Ensure their work does not incur unnecessary fees.
- Adopt a reflective approach to their work.
- Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.

Role-specific criteria

Using the Professional Statement as an outline, you can think about the specific criteria which are most relevant to the role you are recruiting:

- Carry out a mini job analysis for the role you want to recruit for, and/or the role that (for example) the pupil will develop into. What sort of practice is it? Will it require more oral or written advocacy? Is it important they have a high level of numeracy? Do you need someone who thrives whilst working under pressure? Is there a lot of paperwork? Really getting underneath the actual work you are recruiting for will assist you in setting appropriate criteria.
- Identify barristers or members of staff within chambers who are familiar with the role and ask them to set out the key skills and identify those characteristics which lead to superior performance.
- Consider good and poor performance in previous role-holders and extract the factors that led to success or failure. The different perspectives of at least five people allows for consistent themes to be identified.
- Separate the characteristics by key themes then extract the key criteria.
- Review the criteria to ensure that it is accurate, relevant and that nothing fundamental has been missed.

Defining the criteria

Qualifications

The following questions will help when defining criteria:

When setting qualification criteria it is important to differentiate between the qualifications that are essential – like having embarked on or completed the academic element of Bar training – and the qualifications that you are using as a proxy for intelligence and intellectual rigor.

- What are the minimum legal or professional requirements?
- What are chambers' specific requirements?
- What are the reasons for setting the degree or A-Level grade requirements?
Can they be justified? Could this approach unfairly restrict the potential pool of candidates?

Take note

When specifying minimum A-Level or degree grades, you are presumably using them to identify candidates who have the intellectual ability to thrive at the Bar. However, by doing so, there is a risk you could exclude people with potential who may not have had the advantages of a private or elite education. Research suggests that A Levels and even degrees can be a blunt instrument when used as the only or main proxy for intellectual ability because they can put up, or reinforce, barriers to diversity. There is an assumption that because A Levels are centrally assessed they are a level playing field and a good indicator of intellectual ability, but an A or B grade at a state school could in some circumstances be regarded as equivalent to an A* from private school. Some universities have started to recognise this and are now using contextual recruitment to differentiate their offers.

Abilities and skills

- What skills and abilities are required? It might help to think about these in the context of the Professional Statement
- What does high performance of a particular ability or skill actually look like?
- Can chambers effectively measure performance on this ability or skill during the selection process?

Experience

- What types of experience are needed? What opportunities could candidates have had to acquire this experience – for example at school or university, in work or voluntary experiences, or in social activities?
 - Opportunities for extensive travel or study abroad and to undertake unpaid work experience will be affected by family, cultural and socio-economic background. Ensure experience related criteria do not build bias into the selection process.
 - Does length, variety or depth of experience matter? Or are you interested in the quality of experience, and if so, how can you measure it?
-

Using mini-pupillage as a pre-screening tool for pupillage

Mini-pupillages are a form of informal work experience which play an important role in raising awareness of career opportunities at the Bar. However, where the completion of a mini-pupillage or work experience is a condition for obtaining pupillage itself, the BSB Handbook at RC110 3.d. requires that chambers and other Approved Education and Training Organisations (AETOs) apply an open and fair recruitment process to that mini-pupillage (which is otherwise known as an ‘assessed’ mini-pupillage).

It is important that you consider the extent to which you require, or at least expect, candidates to have undertaken mini-pupillages. This type of work experience significantly advantages people who can afford (both in terms of time and/or financially) to work for free, are able to travel to chambers and who are aware of the opportunities available to them. Although there are schemes across the Bar to increase access to mini-pupillage opportunities, these are still small scale. The reality is that, for someone who lives outside London or is based outside of a metropolitan area in which chambers are located, and who doesn’t attend a school or university which is on the radar for these schemes, their ability to undertake one or more unpaid mini-pupillages is significantly reduced.

Tip: Consider carefully how your organisation treats the mini-pupillage experience of candidates in the pupillage selection process.

- Do you take into account the relative difficulty that applicants living outside larger cities may have in accessing mini-pupillages in certain specialist fields?
- Do you take into account that an applicant may not have had the same opportunities as others to obtain mini-pupillage, for financial reasons or because they have been in full-time employment or because they may have been disadvantaged in a merits-based selection process by acquiring skills and qualifications later than their more privileged peers?
- Bear in mind that most jobs do not require applicants to have undertaken a period of work experience before they apply.
- Consider whether it is fair to take into account the quality of the work done during mini-pupillage as part of the pupillage selection process if your organisation does not offer a mini-pupillage to every potential candidate.

Weighting criteria

How you weight criteria is likely to be extremely important in the ultimate decision between candidates. The approach of individual assessors to the application of the criteria should be consistent in order to ensure that the recruitment process is fair.

There are different approaches used to apply ‘weightings’ to criteria. Historically, ‘weightings’ have been given to criteria that are absolutely essential to a role rather than merely desirable. When shortlisting, the successful candidate should meet all of the essential (or weighted) criteria, but may not fully meet all of the desirable criteria.

Where the essential criteria are set at a level that the majority of candidates easily meet, recruiters may find that the list of qualified applicants is too long and that they begin to compensate by shortlisting on grounds outside the agreed criteria. A second problem can arise where one criterion is so heavily weighted that it in effect trumps all the other criteria. This often happens in relation to qualifications, when high academic qualifications, in particular degrees from elite institutions, are seen as more important than any other factor.

When it comes to weighting criteria, some chambers and BSB entities have agreed to take a contextual approach to recruitment and have already set parameters for how they will look at candidates from different backgrounds.

Other chambers are asking candidates to explain any mitigating circumstances which they wish to be taken into consideration when having their grades assessed as part of the shortlisting process.

Ultimately, it is important that everyone responsible for shortlisting is absolutely clear about what the essential criteria are, and why they are important. They should also agree what contextual recruitment measures or mitigation they will consider when shortlisting potential candidates.

Example

Weighting academic achievement could be:

- A first from any university / Distinction on GDL / Outstanding on the BPTC – 3 marks
- 2.1 from any university / Commendation on GDL / Very Competent on the BPTC – 2 marks
- 2.2 from any university / Pass on GDL / Competent on the BPTC – 1 mark
- Mitigating circumstances = +1 mark

Checking your criteria

- Once you have your criteria and weightings, review each criterion and consider:
 - Whether it might risk any inherent bias in the process;
 - If it is absolutely necessary, or included out of habit;
 - Whether it is possible to robustly test that candidates fulfill it during the recruitment process; and
 - Whether each criterion helps candidates to objectively demonstrate their potential.
- Decide well before shortlisting or interviewing how the ‘weightings’ will be used. This ensures that the panel use a consistent framework within which to assess and make decisions.
- Ensure that the selection criteria guide the entire selection process i.e. that application forms elicit evidence against the criteria, that shortlisting is undertaken and interview questions are devised on the basis of them, that any other work samples or exercises are structured to give candidates the opportunity to demonstrate their competence against the criteria, and that all selection decisions are made on the basis of candidates’ performance against these.

See Section 4, Template 1 for a sample selection criteria form.

Assessment methods

Once the recruitment panel have decided on the selection criteria, they need to identify how each criterion will be measured during the selection process. This will involve choosing an appropriate and reliable assessment method that provides the right evidence for the specific criterion.

When recruiting for pupillages or other roles, most assessment methods include the application form itself, one or more interviews or assessment days, and work samples or a presentation. Including practical work samples increases the validity and reliability of the assessment, ensuring that effective selection decisions are made. However, some assessment methods are complex to design or assess and others are particularly prone to bias, which means that they tend to disadvantage particular groups and should therefore be avoided.

Assessment methods can be generally divided into three groups: interviews, psychometric tests and work samples. Psychometric tests in recruitment and selection processes are complex to design, can be expensive to purchase, require trained administrators and may add minimal value to a structured process such as the one recommended in this Guide.

Chambers and BSB entities are advised to use work samples as part of their assessment process. However, care should be taken when assessing candidates with different levels of legal qualification and experience e.g. a work sample used to assess experienced barristers may not be appropriate when assessing candidates for pupillage.

The assessment methods above are not effective measures of academic achievement (i.e. grades attained at school/ university/GDL or BPTC) or motivation. These are best assessed through the application form and the interview respectively.

Work samples

Work samples seek to simulate different activities that form part of the role for which the candidate is being assessed. It is recommended that recruiters design bespoke work sample exercises that are specific to the role and the criteria that being used to assess their applicants.

The content of a work sample is based on a common problem or activity found in the role which draws out the behaviours and skills the panel wishes to assess. Chambers often base exercises on a recent (anonymised) case or create a fictional case based on the common issues between a number of cases or use a recent and widely-reported event to form the basis of a question. The level of difficulty of a work sample exercise must be carefully judged.

Take action

- Pitch the difficulty so that most candidates will be able to make a reasonable attempt at the exercise.
- Balance the difficulty of the task with the amount of time you are allowing candidates to complete the work sample.
- Decide how much information you will give candidates: do you expect them to have the knowledge and experience to complete the exercise, or do you need to give them additional information and/or guidance? For any area of law covered, you need to try to ensure equal familiarity between candidates, or at least that the marking scheme takes account of different levels of experience. Alternatively, a topic may be chosen which requires no prior specialist legal knowledge but is designed to test analytical or advocacy skills. Think about what applicants are being asked to do. If applicants are at a stage in their studies where they are not likely to have learned about how to set out a specific legal structure (like a plea in mitigation or bail application) be prepared to help them with the structure, or mark the work on the content of the reasoning or persuasiveness of the argument.
- Include some difficult and complex elements to the exercise to distinguish between 'average', 'good' and 'excellent' candidates.

Types of work samples

Written case study

In this type of work sample exercise, candidates are provided with the details of an anonymised/fictional case or legal problem and are asked to give a written response to specific questions. Case studies are particularly useful in measuring criteria such as written communication and analysis of complex information. They are easy to make adjustments for and don't necessarily have to be completed in chambers, which can make them more accessible.

Possible drawbacks

This type of work sample can take a little longer to develop and longer for the candidate to complete. However, they can be quite realistic and give a good indication to the candidate about the nature of the role.

Role play (e.g. pleas in mitigation, bail applications, etc.)

A role play exercise involves the candidate being given a brief about, and time to prepare for, a situation that they are about to find themselves in, or a meeting that they are about to have. The role play is then conducted with the 'role player', who is typically a barrister playing the part of a particular character e.g. a judge or a client. The role play can be designed to elicit the criteria that chambers are interested in and is a particularly useful way to measure interpersonal skills, advocacy skills, communication and the ability to work under pressure.

Possible drawbacks

This exercise depends on someone confident and competent within chambers to take part in the roleplay. It possibly advantages candidates who are particularly confident taking part in role plays. Those who have engaged in amateur dramatics or consistently participated in similar exercises during the course of their studies or voluntary experience may be much better at this exercise. It also tests confidence more broadly, which might be a good thing, but there is a risk that someone could be very competent at this sort of exercise while not having the underlying skills you're seeking to test.

Group discussion

In this form of work sample a number of candidates are given a brief and then asked to discuss it, usually with the aim of jointly solving a problem, coming to a decision or being able to defend their particular position effectively. Candidates may be given the same brief or may be given different roles and/or objectives for the exercise. Group discussions are a particularly useful way of measuring interpersonal skills, advocacy skills, influencing, teamwork and communication.

Possible drawbacks

Some candidates' performances may be affected by the behaviour of other members of the group and therefore reduce the consistency and accuracy of assessment. Group exercises may also cause problems with the timing of the assessment and interview process. Typically, there will be insufficient interviewers for every candidate that takes part in the group exercise to be interviewed immediately before or after the exercise, thus causing some candidates to wait between these two stages of the process. Furthermore, this type of exercise could disadvantage applicants who are less confident with the format or atmosphere, perhaps those who haven't been exposed to this style of discussion through school or university. Group discussions favour candidates who are confident and assertive, so be aware that these are the skills you might be assessing.

Presenting a legal argument

Candidates are given time to prepare a presentation, which they then present to the panel of interviewers/recruiting panel. Sometimes candidates are given the presentation topic in advance of the interview date. Assessors will need to decide on an appropriate length of preparation time given to candidates before an exercise; a shorter period may replicate typical working conditions in some practice areas. In this type of exercise, the candidate would present their verbal argument to the panel and may then be asked questions by the recruiting panel. Presentations may be informal or formal and simulate the requirement for an applicant to give a verbal argument or response to questions, such as those asked during judicial intervention. Presentations are particularly useful in assessing persuasiveness, advocacy and communication skills.

Possible drawbacks

If candidates are given the presentation topic in advance, the recruiting panel/assessors cannot be certain that they prepared it without help from others. It may disadvantage applicants who are working or have caring responsibilities and may struggle to find time to prepare. There is also the issue that this type of work sample imparts real advantages to more experienced applicants.

Table 1 – The effectiveness of assessment methods in assessing different selection criteria

	Case study	Role play	Group discussion	Presenting a legal argument
Intellectual achievement	Not effective	Not effective	Not effective	Not effective
Analytical thinking	High	Low	Low	Medium
Effective communication	High (written communication)	High	High	High
Influencing, persuasiveness & advocacy	High (written advocacy)	High	High	High
Handling interventions	Low	High	Medium	High
Resilience	Low	High	High	High
Interpersonal skills	Low	High	High	High
Team working	Low	Low	High	Low
Working independently	High	Low	Low	Low
Motivation	Not effective	Not effective	Not effective	Not effective

The assessment measures above are not effective measures of intellectual achievement, which is best assessed through the application form, or motivation which is best assessed through the interview.

Pilot the work sample

'Piloting' or trying out a new work sample exercise is necessary before it is used for selection. If possible, pilot the exercise on individuals with a similar level of knowledge and experience to prospective candidates e.g. for pupillage, find a graduate 'pilot' candidate with no knowledge of your chambers or ask existing pupils/starter tenants to undertake it. A member of the recruitment panel should then score the exercise to check that the rating form is clear.

- Ask 'pilot' candidates whether the initial instructions were clear.
- Check whether the time allocated is enough to complete the task.
- Check whether the exercise provides a realistic opportunity for candidates to demonstrate the behaviours being assessed.
- Check that the behaviours or other criteria being assessed are accurately reflected in the marking guide for the assessors.
- Check that the scoring process for the exercise is clear and can be applied consistently by the panel.
- Revise the work sample content in line with the findings of the pilot.

Checklist

- Use work sample exercises - when used together with a structured interview, they are very effective in predicting the future performance of candidates.
- Choose the assessment method(s) that best measures your criteria.
- Base exercises on real issues or cases that pupils/tenants may face (altering or combining cases to preserve anonymity, where appropriate).
- Ensure that you inform candidates about your selection criteria, how they will be measured and at what stage of the selection process.
- Don't leave it to the recruiting panel to decide how they want to mark the exercise - there needs to be a formal marking process accompanied by guidelines to ensure consistency.

Attracting and advertising

The best candidates are likely to receive several offers from different chambers or regulated entities, so it is important for providers to distinguish themselves from the rest by building a strong brand image that attracts high quality candidates.

Chambers and BSB entities should also consider how they can attract applications from able candidates who may not have applied in the past.

Chambers need to think about:

- How to make themselves attractive to the best candidates; and
- What to do to increase the diverse range of applications they receive.

Creating and conveying your brand

There is no shortage of applicants for mini-pupillage and pupillage, but chambers will want to ensure that they attract the very best candidates. The process of attracting the top talent and becoming 'a chambers of choice' takes time and should not be limited to specific recruitment periods.

Recruiters' websites provide a useful medium to 'sell' the opportunities open to those who want to join, for example by providing testimonials from previous pupils and information about how chambers or the organisation approaches pupillages and mini-pupillages. Websites should be accessible to those with disabilities. For further information about developing accessible websites visit the [RNIB](#).

Publishing policies which conform to best practice in the areas of diversity, flexible working and parental leave will also serve to promote your chambers or BSB entity. Qualitative research commissioned by the BSB on [barriers to training for the Bar](#) found that candidates from Black, Asian and ethnically diverse backgrounds were more likely to apply for pupillage at places they saw as being more diverse, and female candidates were more likely to apply to places where female barristers were well-represented. It can be inferred from this that it is likely that the information chambers and regulated entities provide in their advertisements and on their websites could affect a candidate's decisions to apply for pupillage with them.

Recruitment fairs, especially national fairs like the Bar Council's Pupillage Fair which attract a diverse audience, provide an opportunity to raise chambers' profile with prospective pupils. It is worth reflecting on the image your exhibition stand conveys to students, including any direct or indirect messages your chosen promotional materials and/or representatives might give. Show the set or organisation you aspire to be, talk about where you're heading and make it possible for prospective, diverse candidates to see themselves as part of that future.

There are a number of **Bar networks** which support barristers and future barristers from under-represented groups. Engaging positively with and supporting these networks can enhance your chamber's brand and send a signal that these issues are important to you. Open evenings or moot competitions, done in collaboration with a network or Specialist Bar Association, are opportunities to raise your profile and expand your network.

Online activity like podcasts, blogs and social media activity can raise the profile of chambers and BSB entities and enable prospective applicants to develop a deeper understanding of the organisation.

External accreditation and equality networks

External accreditation and membership of equality networks can enhance a chambers' reputation, as can a chambers' public commitment to positive employment practices.

Mini-pupillages to widen the applicant pool

There has been a significant increase in the diversity of people coming to the Bar in the last decade or two. This has happened because chambers and other relevant organisations sought to expand the pool from which their applicants were drawn and have made a concerted effort to reach excellent candidates from under-represented groups, such those from Black, Asian and ethnically diverse backgrounds, female and disabled candidates, and those from less advantaged socio-economic backgrounds.

Positive action may be taken to improve the under-representation of particular groups in pupillage and tenancy, as well as any employed position in chambers. Such action may include providing encouragement to under-represented groups to apply for a particular type of work and/or training to help fit them for that work. For more information about using positive action see Section 2, Page 34.

Examples

Bad practice

A chambers in London offered a six-month unpaid internship. This sort of scheme can create a barrier for those who may wish to take part but do not have the financial means to support themselves. It is also likely to breach the law relating to the payment of internships.

Another recruiter said they expected applicants to have undertaken at least three mini pupillages before they applied.

Good practice

A chambers in London took the decision to start offering paid unassessed mini-pupillages; reimbursing successful candidates up to £100 for travel and food, and offering paid accommodation to those located outside of London. It also gave successful candidates the option of undertaking their mini-pupillages across three, four or five days and was flexible as to which days the mini-pupils chose.



- Chambers and BSB entities should use work experience placements and mini-pupillages as an opportunity to increase access for under-represented groups. This includes thinking about how the opportunity is promoted and the selection criteria for applications.
- All assessed mini-pupillages must be advertised on the Pupillage Gateway (usually as part of the advertisement for pupillage) and comply with the BSB's equality and diversity rules, including the rule relating to fair recruitment.
- Mini-pupillages which are unpaid should be time-limited with clear objectives, otherwise they could breach minimum wage legislation - best practice is to provide remuneration for mini-pupillages and travel expenses and accommodation costs should be covered and this should be clearly advertised.
- Chambers and regulated entities should make it clear in their recruitment material and on their website that undertaking one or more mini-pupillages is not an essential selection criterion, and that there are other ways candidates can demonstrate potential and commitment to a career at the Bar.

Case study

For the last five years, 1 Crown Office Row has run an **assessed mini-pupillage scheme** targeted at socio-economically disadvantaged applicants, which guarantees a first-round interview for pupillage to those applicants who perform well in their assessments.

The scheme is open to applicants who have attended a state school or college and meet one or more of the following criteria:

- neither parent went to university;
- received free school meals;
- family has received income support;
- have caring responsibilities; and/or were in care.

Women and applicants from black, asian and ethnic minority communities are particularly encouraged to apply.

The mini-pupillage is a week long and successful applicants are given a bursary of £150 and up to £150 in travel expenses.

Take action

The following measures are recommended to widen your pool of applicants:

- Review marketing material to ensure that your chambers will be perceived by all groups of potential candidates as welcoming and inclusive. Include a reference to your chambers' diversity policies and processes within the marketing literature.
- Contact the Bar Council at careers@barcouncil.org.uk, or the student officers at the Inns of Court, to find out how chambers and BSB entities can help to build links with schools and universities with higher proportions of students from less-advantaged socio-economic backgrounds, through attending nationwide careers events and participating in placement schemes such as the Bar Council's **Bar Placement Scheme** and Inner Temple's **Pegasus Access Scheme**.
- Work experience and mini-pupillages can be an effective way of providing those from low income and more diverse backgrounds with an insight into the work of the Bar and encouraging future pupillage applications. But this only works if these opportunities are genuinely open to people from all backgrounds to take advantage of. Unpaid mini-pupillages may be impossible to access for people on a low income, and even travel into London or other cities can be a barrier to inclusion.
- Think about running some open evenings or events online as webinars – this could make them much more accessible and widen your pool of participants.
- Check that the scoring process for the exercise is clear and can be applied consistently by the panel.
- Revise the work sample content in line with the findings of the pilot.

The importance of advertising

Under the Bar Qualification Manual, any vacancies for pupillages must be advertised on the Bar Council's Pupillage Gateway and, from 1 November 2020 onwards, all AETOs will be expected to recruit in accordance with the portal's pre-determined timetable. This helps to ensure that a wide range of candidates from all groups are aware of the opportunities available to them. A lack of advertising and reliance on informal or traditional networks will restrict the applicant pool and reduce the likelihood of finding the best possible candidates.

Where chambers only source starter tenants from their own pupils, there is no need to advertise these vacancies as the advert will state this. However, where opportunities for starter tenants are broadened to include candidates outside chambers, these roles should also be advertised.

Opportunities for Third Six opportunities should also be promoted to as broad an audience as possible. The Bar Council has a page dedicated to **Third Six vacancies**.

Content of adverts

The BSB's Bar Qualification Manual now specifies, at C2-2.15, that AETOs should provide sufficient information in the advertisement and other supporting materials (for example on the AETOs website) to enable prospective pupils to understand:

- the AETO itself, eg. the type of work that its barristers do, its size, location and culture;
- the number of pupillages available;
- the application process and deadlines, timing of interviews and the criteria that the AETO uses to assess applicants and decision dates;
- when (on their path to qualification) candidates can apply;
- the pupillage training programme and what to expect from a pupillage at the AETO;
- the pupillage award, including expenses and other costs of training that the AETO covers (and what it doesn't cover);
- prospects at the end of pupillage and the process for applying for tenancy / employment; and
- the practical impact of the AETO's equality and diversity policies.

Take action

It is generally recommended that all adverts should briefly cover the following:

- Purpose and content of role – is it a pupillage, opportunity for an experienced recruit, the sort of work/area of practice;
- Information about chambers – location, size, why potential candidates would want to join your chambers etc;
- Reward package – include all the benefits as well as the pupillage award or salary, such as flexible working or exceptional development opportunities;
- Application procedure – indicate how candidates can access and submit the application form and include commitment to make reasonable adjustments for disabled candidates. Provide the closing date and, where possible, the expected interview dates; and
- Selection criteria.

If chambers and BSB entities are taking active measures to improve diversity and social mobility, it is good practice to specifically state that they welcome applications from specific groups that are under-represented in their chambers or organisation. A positive statement about commitment to equality and diversity and social mobility in advertisements encourages applications from different groups. Chambers and BSB entities should also be careful about the language used in recruitment:

- Take care not to use language, such as: ‘mature’, ‘dynamic’ or ‘energetic’ that may appear to indicate a preference for older or younger applicants. This may deter suitable candidates and could inadvertently unlawfully discriminate on the grounds of age.
- Use gender-neutral language (to avoid potential sex discrimination).
- Ensure that any photographs or illustrations do not indicate that applicants are only sought from a particular group or groups.

The application process

All vacancies for pupillages must be advertised on the Bar Council's **Pupillage Gateway** and AETOs are expected to recruit in accordance with the Gateway's timetable (which runs from November to May annually).

Chambers and regulated entities are not obliged to use the Pupillage Gateway to process applications from candidates although this is recommended.

The Pupillage Gateway

The Bar Council's Pupillage Gateway operates one season per year (exact dates for the current year can be found on the **website**). The main stages involved in the Pupillage Gateway application process and their approximate durations are:

- **Pre-season** (November to January): AETOs place advertisements and other information on the Pupillage Gateway.
- **Submissions window** (January to February): Students make their applications during this stage.
- **Applications under consideration** (February to May): AETOs process applications and make selection decisions.
- **Offers** (May): AETOs may only make offers in accordance with the timetabled date and time. Applicants have seven days to accept any offer made to them.
- **Deadline for accepting offers**: All applicants have a seven-day deadline to communicate acceptance of an offer (if any). Applicants will be able to accept an offer anytime up to the deadline. If the seven-day deadline passes without the applicant accepting the offer, AETOs should send out second round offers within a reasonable time period.

AETOs that use the Pupillage Gateway to manage applications from prospective candidates must use the application form.

Before using the Pupillage Gateway, it is recommended that AETOs review the areas covered by the Pupillage Gateway's application form, which include education, employment history, skills, memberships and professional qualifications, responsibilities, awards and interests, references and extenuating circumstances, to assess their relevance to their selection criteria and identify any gaps.

! AETOs using the Pupillage Gateway

AETOs that use the Pupillage Gateway will also want to consider how they will use the additional application features, including the ability to:

- add up to seven personalised supplementary questions, with a word count of up to 1,000 per question. It is recommended that AETOs try to limit themselves to a maximum of five questions, with shorter wordcounts (eg. 200 words) for the more straightforward questions like 'why this chambers' or 'why pupillage' etc, and higher wordcounts for more technical questions
- redact candidates' personal information, the names of educational institutions and/or the details of referees; and
- attach a candidate "chronology" to each application form, which may assist with contextual recruitment.

! Applications outside of the Pupillage Gateway

If your chambers does not use Pupillage Gateway, it is highly recommended that you use an application form rather than asking for a CV and covering letter. Application forms are recommended because they:

- guide candidates into supplying the specific information needed for shortlisting;
- make selection criteria clear;
- facilitate easier comparison between candidates in relation to selection criteria;
- are less susceptible to professional coaching; and
- can be designed to avoid bias and discrimination.

Content of application forms

A suggested template for an application form is included in Section 4, Template 2.

Ideally, application forms should be developed specifically for the position you are recruiting for. This allows for sections to be dedicated to the collection of information relevant to each of the shortlisting criteria.

- Standardised application forms should be grouped into sections, where similar questions and information are themed together.
- Historical information, such as education and employment, should be listed in chronological order.
- If you're not using the Pupillage Gateway to process applications, ensure that the application form and any associated information is available to download from your website.
- In relation to the particular skills that are identified in your selection criteria, you should consider what evidence of skills, achievements and personal attributes can be sought from the application form. It is helpful to ask candidates to provide specific examples illustrating how they meet the criteria. For example:

If you wanted evidence of influencing/advocacy skills, you might ask candidates to 'describe an occasion when you have influenced the outcome of a decision. What tactics did you use and why do you think you were successful?' Or 'provide a specific example that demonstrates your skill in presenting a strong case for a particular point of view.' A question such as : "Do you have good advocacy skills?" is less likely to procure an answer that will help you assess the candidate.

- For resilience, you might include a question such as:
'Describe a situation in the past where you have worked effectively, despite difficult or stressful conditions', or 'provide an example to illustrate your effectiveness when working under pressure.'
- For commitment to a career at the Bar, potential questions might include:
'Why do you want to become a barrister?' 'Which aspects of the law are you most interested in and why?' Or 'What have you done to prepare for a career at the Bar?'

These questions can either be included on the application form itself or, where a generic application is used, candidates should be asked to provide this evidence either in a general section in the form or in addition to the form.

Essential information for a separate form

The following information is important to collect but should be done so using a separate form so as to ensure that it won't be seen by those responsible for shortlisting. In the case of equality monitoring, this happens automatically when using the Pupillage Gateway. AETOs are also able to use the platform to redact candidates' personal information (including requests for reasonable adjustments), the names of educational institutions and/or the details of referees.

Referees

Where AETOs request referee details as part of the application form, they are encouraged to state a preference for academic, employment or personal referees on the form. It is recommended that references be limited to a specific number, to ensure that some applicants don't put forward more than others.

Reasonable adjustments

Ask candidates to provide information about any special requirements should they be shortlisted for assessment or interview. This may include requests for a reasonable adjustment by a disabled applicant. Section 1 Page 20 for more information about reasonable adjustments

Equality monitoring

Diversity monitoring information should be sought on a separate form and should be kept separate from the process. Section 1 Page 46 for more information about diversity and equality monitoring and evaluation.

Mitigating circumstances

Providing a section where candidates can include any mitigating circumstances which could explain why they may not meet all the selection criteria would allow AETOs to consider their application in context. For example, AETOs may award more points to a candidate who suffered a significant bereavement during their finals, or an applicant who had an illness which disrupted their studies. Chambers and BSB entities should agree in advance what they will accept as a mitigating circumstance and how it will impact upon scoring.

The application pack

The application pack, alongside the information provided on recruiters' websites, forms part of a critical marketing exercise for chambers and regulated entities. It can be used to develop their brand as an "employer" of choice for prospective pupils, barristers and employees.

✓ Take action

Comprehensive application packs are known to have a positive impact on the quality and diversity of the initial pool of applicants that the relevant advertisement attracts. To that end, the following information should be provided to potential applicants at the same time (or in the same place) as the application form:

- Role profile i.e. job description and person specification.
- Advertisement.
- Guidance on completing the application form.
- Selection criteria that will be assessed.
- Information about the selection process –what stages will be involved, the assessment methods that will be used and, if known, the dates for these.
- Your AETO's Pupillage Policy and information about what to expect as a pupil.
- Information on the pupillage award and about any guaranteed earnings received in the practicing period of pupillage.
- Information on tenancy and the selection process following pupillage, including a copy of the AETO's Recruitment Policy, where applicable. The AETO's equality, diversity and inclusivity policies including, for example, its equality, diversity and wellbeing policy, maternity, paternity, parental leave and adoption policies, reasonable adjustments policy, anti-harassment policy and flexible working policy.
- Any promotional information written for potential members.

Tip: The **Authorisation Framework** includes more information about the mandatory information which must be included.

Disabled applicants should also be provided with an opportunity to request a reasonable adjustment to the recruitment process from the outset. For example, they may wish to return the application form in a different format such as in paper form or, where appropriate, on tape. See Section 1, Page 20 for more information about reasonable adjustments.

Organising the selection process

It is critical that chambers and BSB entities plan their selection process thoroughly in order to prevent problems or delays which may result in them losing excellent candidates.

Take note

The following information will help when planning the application process for new roles within chambers and BSB entities:

- Since 1 November 2020, it has been compulsory to use the Pupillage Gateway timetable as the framework for all AETOs pupillage recruitment processes.
- Plan marketing activities such as open evenings and attendance at careers fairs well in advance of starting the application process.
- Allow sufficient lead time for placing recruitment advertisements in relevant publications and online. AETOs that use the Pupillage Gateway to recruit can post their advertisements, and the bespoke questions that they will be asking of candidates, up to a month in advance of the application period. The earlier AETOs make this information available, the more opportunity applicants will have to consider their answers and make enquiries in relation to, for example, reasonable adjustments.
- The most challenging part of administering the selection process is finding suitable dates for shortlisting or interviewing when all members of the panel are available. Agree these dates at the outset and build the process around these dates. Ensure that there are contingency plans in place for panel members that are not available at short notice.
- Specify the dates of interviews or assessment exercises in the recruitment advertisement or application pack to give applicants early notice. Some candidates, especially those who work, have caring responsibilities or who are travelling a long way may be disadvantaged if they're not given sufficient notice.
- Be aware that interviews may clash with other events, for example international mooting competitions. Be sensitive to requests to change dates as a consequence.
- Where necessary, allow sufficient time for references to be taken up and for any formal checks to be completed before an offer is made.

Designing a process which works for disabled applicants

It's important to think about how accessible the recruitment process is at every stage. This includes:

- Thinking about how you promote chambers or your organisation, and the opportunity itself. Are you explicit that you welcome disabled applicants and will make reasonable adjustments? Including information on your website about the adjustments you may have already made, or case studies about successful disabled barristers in your chambers or organisation, will make a real difference to whether a potential candidate feels confident in applying.
- Ensure you are prepared if you get a request for reasonable adjustments. Think in advance about how to make the application process flexible, from having alternative formats of the application form and the information you send to shortlisted candidates readily available, to ensuring the interview rooms are accessible and well lit.
- Have a plan in place if you select a candidate who goes on to request reasonable adjustments – the way you respond to the initial request and your readiness to understand what is needed, and to meet that need where possible, will demonstrate to the applicant that you take the issue seriously.

More information

For more information about reasonable adjustments for disabled applicants see Section 1, Page 20.

Positive action



Positive action is the term used for permitted measures under the Equality Act to remedy the under-representation or disadvantage experienced by members of protected groups in the workplace.

Positive action can create real change in addressing underrepresentation in training, including pathways to pupillage, for career development via targeted access to specific streams of work and also the mitigation of disadvantaged to underrepresented groups via fixed bursaries or scholarships. Two types of positive action are allowed:

Section 158 allows organisations to take ‘soft measures’ to increase representation, including:

- ensuring the notes from evening seminars are put online so that women, who disproportionately have child care responsibilities and may not be able to attend the meetings, are able to access the notes;
- working with local schools and FE colleges, inviting students from groups whose participation in the workplace is disproportionately low to spend a day/ week in chambers;
- offering all new tenants opportunities to be mentored by established practitioners;
- steps aimed at assisting the access of disabled barristers to court rooms and to chambers – which would overlap with the reasonable adjustments duty in the Equality Act;
- Advertising in Counsel Magazine for new pupils or tenants, using wording encouraging applications from those with particular protected characteristics; and
- Examining opportunities to socialise and develop working relationships within chambers and ensuring that these do not

favour some groups more than others.

Section 159 permits organisations to take positive action by “treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not”. This section only applies where “A is as qualified as B to be recruited or promoted”. The scope of the provision is relatively narrow, allowing you to consciously favour candidates with a particular protected characteristic when faced with a tie-breaker situation in a recruitment or promotion process.

Data needs to be gathered and analysed regularly to assess the need for action to address underrepresentation. For example, when prospective pupils are being selected post-interview, the underrepresented groups in chambers (both at the junior end and more widely) should be apparent from up-to-date data prior to choices being made. The panel undertaking selection decisions need to be aware of the criteria for selection to ensure they are in a position to determine (and to document) how and when one candidate might be “as qualified as” another, in order that the tiebreaker provision can be utilised.

! More information

The Bar Council has published **guidance on positive action** for chambers and BSB entities which includes examples and information about the data which needs to be collected.

Making an offer

In accordance with the BSB's Bar Qualification Manual, all offers of pupillage must be made in accordance with the annual timetable advertised on the Pupillage Gateway.

AETOs are not able to make offers to applicants in advance of the timetabled date, including being barred from making informal or indicative offers in advance.

It is important to plan for the offer stage of the process. Offers of pupillage, mini-pupillage, tenancy or employment should always be made in writing. Even oral offers at interview can be legally binding, so it's important that chambers and regulated entities take care to accurately relay any relevant terms and conditions. If candidates feel that the role or terms have been misrepresented to them, this may affect their performance once in post.



✔ Making an offer in writing

On 1 May 2020, the BSB made it mandatory for all AETOs to make offers of pupillage to prospective pupils in writing. These offers must state the following:

- That the AETO and pupil supervisors will promptly provide the pupil with all necessary assistance in complying with their regulatory obligations e.g. registering their pupillage with the BSB, applying for any necessary waivers, etc;
- Pupillage funding arrangements;
- That pupils must provide, prior to starting the non-practising period, clear documentary evidence to the AETO that they have satisfactorily completed academic and vocational training components, are a member of an Inn, have obtained immigration visas (where relevant) and registered their pupillage with the BSB;
- The notice period for the pupil to withdraw prior to the starting the non-practising period;
- Any conditions which must be fulfilled prior to the pupil starting the non-practising period e.g. required achievement in vocational training; and
- The date of commencement, length of the non-practising and practising periods and the date of expected completion.

In addition, offers must incorporate the AETO's standard pupillage terms which must be available to the prospective pupil either through the AETO's website or on request. The Bar Council's Education and Training Committee has produced a **template written pupillage agreement** to assist AETOs in complying with their regulatory obligations. The written pupillage agreement must contain the information set out at pages 6 to 12 of the BSB's '**Mandating the timetable for pupillage recruitment and written agreements for pupillage**' paper.

Tip: Avoid making verbal promises or offers in advance of the timetable. You may be blown away by a candidate and be sure you want to make an offer, but it is important to stick to the timetable, otherwise applicants might pull out of other interviews and be disadvantaged.

Making a conditional offer

In most instances a conditional offer will be made to the successful candidate(s) depending on final checks of their suitability, including references and verifying their qualifications.

Take note

There are two types of conditions which may be included in conditional offers:

- pre-conditions, such as satisfactory references and successful completion of qualifications; and
- post-conditions, such as completion of a satisfactory probationary period.

An offer letter should clearly state any conditions attached to the offer. It should also specify the main terms of the contract.

Ensuring the candidate has a right to work in the UK

Chambers and BSB entities have a legal duty to check that candidates have the legal right to work in the UK before they are appointed.

The Bar Council operates as a Licensed Sponsor on behalf of **UK Visas and Immigration (UKVI)** and is therefore able to provide a Certificate of Sponsorship for mini pupils, pupil barristers and tenants working in chambers in England and Wales; enabling suitably qualified nationals who meet the qualifying criteria to train and practise at the Bar.

In addition to consulting **UKVI's Guidance for Sponsors**, chambers seeking to offer a tenancy or funded pupillage to nationals are encouraged to **contact the Bar Council** in order to gain a full understanding of the adaptations we have made, as a specialist Licensed Sponsor, to the Skilled Worker Terms of Reference.

To find out more about the Bar Council Immigration Support Service, please email **Immigration@BarCouncil.org.uk** or call +44 (0)207 611 1321.

Chambers and BSB entities must keep dated copies of every document checked when ensuring that the candidate has the right to work in the UK. The date can be manually or digitally recorded but must be made at the time the documents are produced, checked and copied. It is therefore advisable to label them in the following manner: “The date on which this right to work check was made was [insert date]”.

Obtaining references and checking qualifications

The purpose of obtaining references is to corroborate important information provided by the candidate about their academic qualifications and employment history, and to seek the referees’ assessment of the candidate’s suitability for the position.

Prior to pupillage or employment, the successful candidate should be asked to provide the original certificates for all relevant qualifications and requirements. The ‘employer’ should take copies and retain these on file.

Informing unsuccessful candidates

The manner with which unsuccessful candidates are treated can have a significant impact on an AETO's reputation among future potential pupils and barristers.

Many candidates will have invested considerable time and energy into their application. Consequently, informing candidates of the outcome of their application or interview needs to be managed professionally and sensitively.

Take action

- AETOs should ensure that they let all applicants know if they have been unsuccessful at the initial sift stage. AETOs that use the Pupillage Gateway are able to do this through the status function and can also use the site to email their applicants. Those who do not use the Pupillage Gateway are encouraged to email their candidates. At this stage it is enough to thank candidates for their interest and wish them well for the future.
- Candidates who have made it through the initial shortlist and to first or second stage interview require a more personal and thoughtful response.
- Reserve or second choice candidates who are appointable should not be rejected until all checks have been successfully completed on the preferred candidate and they have accepted the offer. AETOs may wish to send a holding letter to second choice candidates whilst they complete checks for the preferred candidate, informing them that their application is still under consideration.
- Tell candidates at the interview when they can expect to hear the result of their application and try to be realistic about how long the selection process is likely to take. It is important to note that a protracted selection process may result in the best candidates receiving earlier offers by other chambers or regulated entities, although this won't apply to pupillage offers after 1 November 2020 as all AETOs will be expected to make their offer on the same date.
- AETOs can inform unsuccessful candidates of the outcome by email or telephone. An email is the most usual method used in selection processes where there are many candidates. Where there are fewer candidates, and particularly when there are internal candidates, such as for starter tenancies, a conversation may be more appropriate; however, all conversations should be followed with written confirmation.

Effective feedback

It is good practice for any organisation to offer feedback to candidates after a recruitment process.

! The importance of feedback

Providing feedback is important for many reasons:

- Candidates who have received good quality feedback are more likely to perceive the decision as having been made fairly, even when they do not necessarily agree with it.
- It enhances the organisation's reputation among prospective pupils by reassuring them that the selection process was professional.
- It provides an opportunity to influence successful candidates when they are faced with competing offers.
- It enables candidates to understand where their strengths lie and where development might be needed in order for them to improve.

The level of detail included in the feedback will depend on how far along the recruitment process an applicant is:

- **Generic email** – sent to everyone who was unsuccessful at the first stage of shortlisting thanking them for their application and wishing them all the best for the future.
- **Personalised email** – sent to those who got through the first shortlisting round and may have taken part in a second selection round such as a first interview or assessment. This should include more detail about why they were unsuccessful, possibly letting them know what they scored or broadly the areas, experience or knowledge the organisation was looking for.
- **Bespoke email** – sent to applicants who attended interviews and took part in other selection exercises. These applicants have invested a lot in the recruitment process, and they should be given more detailed, constructive feedback. This can contain the offer of a phone call if the candidate requires more information or feedback

Tip: Consider publishing some general feedback on your website that highlights a few points about what was viewed positively and what was viewed negatively during the recruitment application process. More examples are available in the **Bar Qualification Manual**.

Constructive feedback

The main purpose of constructive feedback in selection is to help candidates understand what they did well and how they could improve. This applies to candidates who have been successful and offered a position, as well as those who have not. The feedback should be timely and specific. Constructive feedback is not personally critical; it is descriptive and should always be directed to the action/behaviour, as opposed to the person themselves. E.g. “the answer you gave was X and was strong because of Y, however, another candidate who scored slightly more highly talked about Z, and that was important to us because of ABC”.

Take action

At the end of the interviewing process and after the selection decision has been made, the panel should discuss and agree the feedback appropriate for each candidate. It is important to do this straight away while the interview and candidates are still fresh in the mind. Constructive feedback is:

- Delivered with kindness – the candidate has been unsuccessful and this is your opportunity to help them feel better about the decision.
- Specific; with examples or quotes of what the candidate said or did.
- Relevant to the competency, criteria or exercise through which the candidate was assessed.
- Balanced between positive and constructive feedback.
- Focused on behaviour and backed up with evidence, rather than on personality or any other irrelevant characteristics.
- Helpful in guiding the unsuccessful candidate to areas in which they can improve or which they may wish to present differently in subsequent applications.

See feedback template Section 4, Template 7.

Record keeping

All documents relating to the selection process should be retained for 12 months* following the completion of the recruitment process.**

The records of successful candidates need to be kept throughout the duration of their employment and for at least six years after they leave.

Important

* For the pupillage recruitment process, AETOs must keep all recruitment records for five years in line with the Bar Qualification Manual.

** Non-UK applicants

If one or more of the successful applicants is a non-UK resident, then the copies of the relevant documents (including copies of all recruitment documents i.e. not just those relating to the applicant, but those relating to the relevant process as a whole) must be kept for the duration of the applicant's employment, pupillage or tenancy, and for a further two years after their departure. Further, chambers and BSB entities must be able to produce these documents quickly in order to demonstrate to UKVI that they've performed a right to work check and retain a statutory excuse.

Application forms, compiled notes, rating forms and the other documents containing personal data on candidates are covered by the General Data Protection Regulation. They need to be kept securely and procedures should be in place to securely dispose of documentation relating to unsuccessful applicants once the relevant period has expired.

Chambers and BSB entities will need to record information for monitoring and evaluation purposes, which should be retained for several years. This should be stored electronically and data held on individuals should be anonymised using reference numbers rather than recording names. There is further guidance on GDPR in the [**BSB's Guidance on the Diversity Data Collection Rules**](#).

Subject Access Requests

Chambers and BSB entities are under a legal obligation to provide copies of personal data to data subjects in certain circumstances if requested. If you have retained personal data please ensure you can meet your GDPR disclosure obligations. For more information on how to do this refer to your data protection lead and internal GDPR compliance framework.

GDPR Rules

GDPR rules allow you to keep personal data for as long as you need it. Each category of data, eg recruitment application forms, should be referred to in your organisation's data retention policy and register with an accompanying legal basis for processing, and a time frame for retention.

Monitoring and evaluation - making sure your recruitment process is fair

Regular monitoring and evaluation of an organisation's selection processes is vital to ensuring that no particular groups of applicants are being unfairly disadvantaged.

For example, organisations may find that they are not attracting as wide a range of applicants as expected or that some groups consistently score more highly at interviews than others. It may be that prejudices and attitudes are not even conscious, but are influencing decisions. Monitoring enables these types of issues to be identified and the underlying reasons for them to be examined. If there are no discrepancies, statistics may support the objectivity of the process in the event of a challenge or external audit (for example BSB monitoring).

Equality and Diversity Officer(s), Diversity Data Officer(s) and/or other senior members of chambers should have a specific responsibility for ensuring monitoring procedures are implemented and data is collected and analysed. The results should be reported on to recruitment and/or management committees at regular intervals.

Collecting monitoring data from candidates

Chambers and BSB entities should collect monitoring data on a separate monitoring form. The BSB's Handbook RC110 3.f and g. requires equality monitoring within chambers and BSB entities, and the regular review of applications for assessed mini-pupillage, pupillage, staff and membership of chambers.

Take action

The review must include:

- Collecting and analysing data broken down by race, disability and sex;
- Investigating the reasons for any disparities in that data; and
- Taking remedial action aimed at removing or reducing the disadvantage experienced by any group.

This is a minimum requirement for recruitment diversity monitoring and chambers and BSB entities may wish to include further strands in its monitoring, for example, relating to age, LGBT+ or socio-economic background, to support their policies to promote diversity and social mobility. See the diversity monitoring questionnaire in Section 4 – Template 8.

Chambers and BSB entities should be aware of the provisions of the General Data Protection Regulations, the BSB Handbook RC110 3 n (which requires the appointment of a Diversity Data Officer) and the BSB Guidance on Diversity Data Collection Rules.

Individuals have a right to request access to, and request the correction of, sensitive personal data held by chambers and BSB entities. Candidates should be informed why the information is being collected, and how it will be used and stored confidentially and securely.

The collection of diversity data from individuals must be voluntary and individuals should not be made to feel compelled to provide it. It should be made clear to applicants that their response to any of the equality monitoring questions is entirely voluntary and will be used for monitoring purposes only.

The opportunity to request reasonable adjustments for disabled applicants should be separate from the diversity monitoring form. For more information about reasonable adjustments see Section 1, Page 20.

Recording monitoring data

Monitoring data should never be made available to the recruitment panel during the selection process. Someone independent of the recruitment panel should record monitoring data.

The Pupillage Gateway automatically gathers this data, by application stage, for its users and enables them to compare their own data with the Bar Council's 'All Applicant' report and with data broken down by areas of practice such as 'Chancery', 'Commercial' and 'Crime'. This can be an extremely useful tool for monitoring and allows AETOs to see how they compare against the Bar as a whole.

The Bar Council has developed an **online tool to aid chambers** and BSB entities to enter and analyse diversity data for recruitment outside the Gateway. This tool is an Excel spreadsheet which allows for easy collating and reporting of candidate outcomes by diversity strand through the recruitment and selection process. It will help to identify the success rates of different groups of applicants and any adverse impact the recruitment process may have upon different groups.

The spreadsheet contains instructions on how to use it and queries about using this can be sent to **equality@barcouncil.org.uk**

For the purposes of monitoring recruitment, it is important that data is not totally anonymised as it may be necessary to link the data to the person to whom it relates. However, the identity of individuals can be concealed in the analyses by identification numbers. Chambers and BSB entities should ensure that any circulation or publication of its analyses of diversity data does not reveal the identity of an individual.

All spreadsheets should be password protected, with only those responsible for monitoring and analysis of the data allowed access to the data. The data should be stored confidentially for a period of 12 months*. Anonymised analyses should be kept so that checks on the recruitment and selection process can be made and patterns of success (or lack thereof) observed across a number of years.

*** For the pupillage recruitment process, AETOs must keep all recruitment records for five years in line with the **Bar Qualification Manual**.**



✔ Analysing and reporting monitoring data

The selection process should be analysed as follows:

- Chambers and BSB entities should consider whether the representation of applicants from different groups, such as men and women, is proportionate. For example, the proportions of different groups for pupillage could be compared with UK domiciled students graduating from the Bar Professional Training Course. It can be useful to compare data with external comparators such as the Higher Education Statistics Agency (HESA) diversity data on UK domiciled post graduate students or Labour Force Survey data of graduates. The Bar Council can provide advice to chambers or other BSB authorised bodies with regards to identifying suitable statistics for benchmarking.
- Where underrepresentation of a particular group is identified among applicants, chambers and BSB entities should review the marketing of vacancies and take steps to attract applications from more diverse groups. Information on permitted positive action is available in a Bar Council Guide to **Positive Action**.
- Chambers should assess the relative success rates of different groups through the selection process. Differential success rates at shortlisting and appointment need to be investigated to ensure that the assessment process has been designed, and is being conducted, in an objective and fair manner. Assessment exercises may need to be reviewed or training provided for interviewers or markers.
- As well as stage by stage comparisons it can be useful to look at the overall likelihood of different groups being appointed i.e. the proportions of appointments from each group. Small disparities at each stage may combine to create a large disparity that needs to be addressed. Where the number of appointments made in a recruitment exercise is small, the data should be compiled with data from future exercises so that patterns in recruitment can be assessed over time.

Sources of data:

- The BSB monitors the composition of the Bar, both with the support of the General Council of the Bar's Records department and by carrying out and commissioning a variety of surveys of the profession.
- There is a lot of information generated by the Pupillage Gateway.
- Research publications and statistics on employed and self-employed barristers, pupils and students can be found on the BSB website.



Checklist

In this section you have learned about designing a fair recruitment process, including:

- selecting a recruitment panel;
- setting selection criteria which avoids bias and discrimination;
- choosing assessment methods;
- attracting and advertising;
- ensuring the application process is fair;
- designing a process which works for disabled applicants;
- making an offer;
- record keeping; and
- monitoring and evaluation.

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

Helpline: 0207 611 1426

Email: equality@barcouncil.org.uk