



Bar Council Equality and Diversity Guides Workforce Monitoring: Information for Chambers

All chambers are required to monitor and report on the profile of members of chambers and staff at least every three years. This document tackles frequently asked questions and suggests tips to improve both the process and disclosure rates in chambers.

Frequently Asked Questions

1. Should I do workforce monitoring online or through a paper based exercise?

	Pros	Cons
Online	<ul style="list-style-type: none"> • Possibly likely to have more responses • Perhaps better confidentiality/anonymity • More efficient collection of data (easy to add to and/or edit) • Probably better for a large chambers • Secure with password protection • A more reliable record with a footprint that can be saved (easy to find in future rather than looking up paper records in archives) 	<ul style="list-style-type: none"> • May take a long time to set up • You cannot avoid a problem of identification if there is only one person in a category e.g. a pupil (this means their data is not confidential from the data collector/person analysing data) • Potential electronic data problems (data storage etc.)
Paper	<ul style="list-style-type: none"> • Easy to set up • Quite quick to deal with if you have a small chambers, low technical ability needed, low risk of some form of electronic data security problem • Easy to locate 	<ul style="list-style-type: none"> • Less likely to get responses • More difficult to collate information if chambers are locating across multiple sites. • Physical paper if kept can be a data security problem so it can be less secure • Confidentiality can be difficult because the person collating the data

	<p>may be able to establish from answers who is completing the questionnaire.</p> <ul style="list-style-type: none"> • People can write who they are on the sheet (but perhaps that is their own problem) • Papers can get lost/damaged • Harder to edit or correct
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Bar Council recommendation: Consider an online survey in a large chambers (especially if you are located in different places); for chambers of say less than 40 consider a paper based exercise.

Warning: If you are using an online tool make sure data storage arrangements comply with your chambers policy (i.e. data should be stored in the UK/Europe)

2. Should I combine a workforce and work allocation data collection exercise and undertake both simultaneously?

	Pros	Cons
Separately	<ul style="list-style-type: none"> • Different issues are involved with each exercise • Potentially shorter forms for each mean you are more likely to get a response • These are both quite difficult tasks and you probably want to think quite hard before doing them together as one might undermine the objectives of the other. • Separate exercises and separate data may have the advantage of providing more useful information for both. 	<ul style="list-style-type: none"> • More time consuming to fiddle around with two and then compile data • Some overlap may occur – duplication of activity may reduce response rate for one or the other • May be difficult to get members of chambers to complete more than one survey
Together	<ul style="list-style-type: none"> • Can get an overall picture of how Chambers as a whole operates • Might save time • Takes advantage of any overlap 	<ul style="list-style-type: none"> • Form can be lengthy and involve ‘alien speak’ for barrister/staff alike • Huge problems about confidentiality • In order to undertake an allocation of work exercise it may be necessary for

	<p>confidentiality to be waived – this may cause problems in its own right</p> <ul style="list-style-type: none"> • Substantial amount of work if done together
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Bar Council recommendation: It is better to do them separately.

Tip: Work Allocation Monitoring.

You need to monitor work allocation based on gender, ethnicity and disability. Data collection for work allocation by its nature cannot be anonymous. Consider a one off exercise to collect outstanding data on all members of chambers. Add data on new members based on their pupillage/tenancy application monitoring forms, or by checking with them. Place the onus on members of chambers to inform the DDO if any characteristic changes e.g. acquiring a disability etc. But note, you may have to regularly remind members to update their details. Keep the non-anonymised data on a password protected spreadsheet. The EDO/DDO only should be able to access this for the purpose of running reports. On this basis you should be able to avoid collecting data for the purpose of work allocation again. This reduces the number of monitoring exercises you are required to undertake and may reduce resentment/reluctance to participate in the 3 yearly workforce monitoring exercise.

3. If I am undertaking an anonymous workforce monitoring exercise how do I resolve the issue of consent?

Option 1:

Paper based exercise

You should apply a coding system with no other identifying data on either the questionnaire or consent form. Each questionnaire should have a code with a corresponding code on the consent form (if this is separate) – this enables consent to be double checked.

A Member of Chambers (or the Diversity Data Officer) should hold the spreadsheet which links codes to names. This should only be referred to when checking consent and/or to establish how many forms have been submitted as opposed to who has submitted forms.

Option 2:

Online exercise

Have tick box on consent on the front page and do not allow progression to question until ticked yes/no.

Explain next to the consent box the implications of giving/not giving consent, clarifying that ticking the 'no' consent box means that no data at all on either Sexual Orientation or Religion & Belief can be published by chambers. Provide reassurance that no data can be published that can identify any one individual (even where consent is given).

Recognise (and state) that due to anonymity of the data collection exercise it will not be possible to identify or evidence who has or has not given consent.

4. How do I make an online survey (e.g. surveymonkey.co.uk, snapsurveys.com, smartsurvey.co.uk) completely anonymous?

You can make an online survey absolutely anonymous by turning off the IP tracking facility. If you are doing this to reassure members of chambers and staff, make sure you tell them you have done this.

5. Monitoring Questions

a) What questions should I ask?

You should base your questions on the Legal Services Board/Bar Standards Board questionnaire here:

https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf (See page 25).

You **must** use the categories and words exactly as they appear in the BSB questionnaire but this has the added advantage of enabling you to compare your profile with that of the Bar as a whole. The LSB and BSB took advice on the correct terms to use for each category.

Tip: Adapting the LSB/BSB Questionnaire

Whilst we don't necessarily recommend you start changing the role questions on page 1 of the questionnaire, you do have the option to adapt the terminology to create a better fit for your chambers/workforce if you wish to e.g. chambers staff may not wish to be described as 'IT/HR/other corporate services'. You can also adapt the 'Your role in your organisation' question if it doesn't make sense in your chambers context.

BUT don't change the monitoring questions themselves

b) What additional questions can I ask? e.g. transgender, university, location (for chambers operating in multiple locations)

Whilst the BSB does not require you to ask any additional questions in your questionnaire you have the option to choose to do so. If you do, please be cautious. It is very easy to make mistakes, use the wrong terms or ask so many questions individuals can be identified particularly in smaller chambers. If you are unsure about something you can always check with the Bar Council.

You should be able to review the diversity of your intake by university by analysing the application forms of pupils over a reasonable period e.g. 10 years +.

Gender questions generate a number of issues on self-identification and following advice from trans equality organisations and data protection specialists the BSB decided not to require data collection in this area. If you are interested in this, more information can be found here:

http://www.equalityhumanrights.com/sites/default/files/documents/research/rr75_final.pdf

There is useful Scottish guidance around monitoring transgender here:

<http://www.scottishtrans.org/wp-content/uploads/2013/03/stamonitoringguidefeb09.pdf>

Caution:

All data storage is important but if you hold transgender data you need to be completely confident of data storage and confidentiality arrangements. We would also caution that the addition of a transgender question may make it easy to identify the individual.

6. I don't understand the consent rules which state '*the published summary of anonymised data shall: (i) exclude diversity data relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the members of the workforce*'. Does this mean I can only publish data on sexual orientation and religion and belief if everyone in chambers has given consent? Or does it mean I can only publish the data of those who have provided consent?

Data on sexual orientation and religion or belief can only be published if all members of the workforce give their consent. If one person does not consent for their sexual orientation/religion or belief data to be published, then nobody's data in those categories is published. This is to minimise the risk of identification of individuals or the unintended outing of a member of chambers.

This literally means that you can only publish data on Sexual Orientation and Religion & Belief if everyone in chambers has given consent.

The rules also generally provide that if there are less than 10 individuals in any diversity category, even if consent is given, then chambers should not publish that data. This is BSB guidance and not a strict rule. They introduced this as guidance because the risk of identification is considered more likely to occur when the number of individuals in a particular category is less than 10.

Whilst there may be circumstances where all individuals in chambers are willing to consent to such publication, there should never be any pressure on them to do so and the likelihood of identification should be made clear to them (so they can give 'informed' consent). If consent from all members is given, chambers should consider whether publishing the full data or a summary of the data in headline terms is the best course of action.

Scenario: In a Chambers there are 2 full tenants who identify as gay, 30 respondents who identify as straight, 3 prefer not to say. All have given permission. On the BSB's interpretation this chambers should not publish data on Sexual Orientation.

Note: You do not need consent from all members of the workforce to publish data on gender, age, race or disability but guidance re groups of less than 10 still applies.

7. What is a good response rate? What do I do if the response rate is poor and chambers looks less diverse than I know it is?

The response rates vary across chambers. Some chambers have a response rate exceeding 95%! Where your response rate was less than 50% in the last monitoring exercise you should put in place robust targets (you might want to put improving response rates as an action in your chambers' Equality Action Plan!). 60% is a reasonable response rate, but you should aim for 75-80%.

Tip: Communications

As a matter of course, but particularly if the response rate in the past was poor, in advance of your monitoring exercise you should put in place robust communications explaining the purpose of monitoring and how it benefits chambers, alongside reassurance on anonymity.

If your response rate is poor during the exercise then send reminders and chase individuals generally as a group and/or as individuals reminding them that if they haven't responded then the figures collected will not be accurate and may provide a less than true picture of diversity in chambers.

Consider providing a 'dummy' report to show members how chambers' data will be published in order to reassure those concerned that they may be identified from the reports.

8. How should I publish data (what format) still protect anonymity? What to do if you have small numbers and it is too easy to identify?

Publish the following (by seniority, if possible) in actual numbers and percentages:

- Gender: Men/Women/Prefer not to Say
- Race (depending on the size of chambers you may wish to combine all BAME categories i.e. White/BAME/Prefer not to say)
- Age
- Disability: With a disability/No disability/Prefer not to say

If any of the above come to less than 10 then the information should not be published even where individual consent has been secured.

Only with 100% consent from all members of chambers, publish data on:

- Sexual Orientation: Either as LGBT+/Heterosexual/Prefer not to say (or, depending on numbers and applying the rule of >10 per category, you might choose to separate categories)
- Religion & Belief: You might opt to publish separately or combine categories e.g. Christian/No belief/Other beliefs (depending on numbers – applying the rule of >10 you might choose to separate categories)

9. What sort of communications should I put in place to encourage participation?

- Make sure members of chambers know the monitoring exercise is coming well in advance
- If helpful consider referring to Bar wide statistics to demonstrate to members of Chambers workforce what the current statistics are and to explain the reasons for keeping data up to date. Up to date data can be found here <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/>
- Get senior and respected members of chambers in every practice area (where you have a mixed set) to champion monitoring and encourage participation.
- Identify those who will be antagonistic towards any exercise and take the time to meet with them to explain the benefits of participation

- Make a 'business' case for having accurate data e.g. pupil attraction; securing work (the Government in particular will instruct on the basis of more diverse chambers); ensuring facilities meet the needs of all chambers; ensuring continuity of a practice area e.g. everyone won't retire, take family career breaks etc. at the same time. Reiterate this is about effective chambers management not box ticking.
- Chase groups/individuals for responses and remind everyone of the importance of such exercises
- Explain in detail how anonymity is protected
- Demonstrate how data will be published (to reassure members that it will be very difficult to identify any individual)

Tip

Although members and staff cannot be forced to complete the monitoring form, if your chambers' response rates continue to be poor you may want to consider building a requirement to participate with data collection exercises into your chamber's constitution. If you are considering this option - be careful as such a step might encourage members to rebel and tick 'prefer not to say' which won't help you in generating an accurate profile of your chambers, nor in developing your reports.

10. How can I reassure participants over data protection, anonymity etc.

Provide detail on steps taken to protect anonymity and data storage. You don't need to provide this information in the main body of any letter or text. Think about having a link on your website where members of chambers/staff who are concerned about this issue can find out the answers and be reassured as to the steps you are taking as a chambers. For example if you are turning off the IP address explain what this means and that you are doing so.

Consider including samples of how the data will be presented to allay fears over exposure.

Tips

- ✓ Consider an online survey for ease of access
- ✓ Communicate the purpose of the exercise and steps that have been/will be taken to protect individual confidentiality.
- ✓ Clarify the process of data collection, storage and disposal
- ✓ Consider making a business case for monitoring – demonstrate it is not just about ticking boxes but generating evidence for developing/amending chambers policies that benefit everyone
- ✓ Demonstrate a positive change that has happened in chambers as a result of monitoring
- ✓ Get those with influence in chambers behind the monitoring exercise
- ✓ Reinforce the importance of equality more generally

Scenarios

Chambers X – Paper Based Exercise

What we did...

Sent out a questionnaire with a consent form attached in brown paper envelopes.

Communications...

Sent an email from senior silk to inform workforce, spoke about it in chambers tea. Sent a second email from the data diversity officer pointing out how terrible we looked if the response rate did not improve

Response Rate... 70%

Concerns and how we addressed them...

White men did not want to fill out the form and did not see the point, we explained how a skewed set of data would not assist the way chambers looks to the outside world. Some silks were not able to understand the consent procedure, so we explained it to them again. The pupil was understandably concerned about their data (there was only one pupil), we combined their data with the junior tenants to assist in preserving their anonymity.

What we would do differently next time...

We would consider an online exercise next time because it should involve less work for the E&D officer in collation.

I would also want to run the exercise with a longer lead in time and a longer period for chivvying responses out of people.

Chambers Y – Online Exercise

What we did...

We sent an email out with a reminder after one week, and a chaser after 2 weeks.

Response Rate

80%

Concerns and how we addressed them...

We needed to reassure participants over their anonymity

What we would do differently next time...

We would explain more clearly the anonymity measures taken.

Appendix 1

BSB RULE ON EQUALITY MONITORING: rC110.3

.e your chambers or BSB authorised body:

- i. conducts 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 this Rule C110; and
- ii. takes any appropriate remedial action identified in the light of that review;

.f subject to Rule C110.3.h chambers or BSB authorised body regularly reviews:

- i. the number and percentages of its workforce from different groups; and
- ii. applications to become a member of its workforce; and
- iii. in the case of chambers, the allocation of unassigned work,

.g the reviews referred to in Rule C110.3.f above include:

- i. collecting and analysing data broken down by race, disability and gender;
- ii. investigating the reasons for any disparities in that data; and
- iii. taking appropriate remedial action;

.h the requirement to collect the information referred to in Rule C110.3.g does not apply to the extent that the people referred to in Rule C110.3.f.i and Rule C110.3.f.ii refuse to disclose it.

BSB GUIDANCE ON MONITORING

Rule rC110 3.q-t of the BSB Handbook sets out rules on the collection and publication of diversity data on all people who work in chambers including members, staff and pupils. This “headcount” data must be collected and anonymised and an analysis published by 31 December 2012 and thereafter every 3 years.

Data on sexual orientation and religion or belief should not be published without the consent of everyone working from chambers. No data should be published where, because numbers of respondents in any category are low, individuals could be identified - save with the consent of those in chambers.

Data should be collected using the model questionnaire provided in the “BSB Handbook: Supporting Information” across the following strands: race, gender, disability, sexual orientation, religion or belief, age, socioeconomic background and caring responsibilities.

The BSB Handbook requires the appointment of a Diversity Data Officer in chambers, whose name and contact details must be provided to the BSB and specifies the duties of this post. These include: the collection, processing and publishing of diversity data; ensuring a chambers’ written policy is drawn up on the collection, publication, retention and destruction of diversity data; and obtaining explicit consent from everyone working in chambers in respect of data collection, processing and publication.

A sample policy and consent form is provided in the “BSB Handbook: Supporting Information”

https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf (pages 46-7).