



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.

Monitoring questions may change. Please review questions for each monitoring exercise to ensure you are in line with current good practice.

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 larger 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 smaller 	<ul style="list-style-type: none"> • Less likely to get responses

	<p>chambers, low technical ability needed, low risk of some form of electronic data security problem</p> <ul style="list-style-type: none"> • Easy to locate 	<ul style="list-style-type: none"> • More difficult to collate information if chambers are located 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 may be able to establish from answers who is completing the questionnaire. • 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
--	---	---

Bar Council recommendation: Consider an online survey in a larger 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 [GDPR/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 	<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

	<p>undermine the objectives of the other.</p> <ul style="list-style-type: none"> • Separate exercises and separate data may have the advantage of providing more useful information for both. 	
<p>Together</p>	<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 confidentiality to be waived – this may cause problems in its own right • Substantial amount of work if done together

Bar Council recommendation: It is better to do them separately.

Tip: Work Allocation/Income Monitoring.

You need to monitor work allocation based on race, disability and gender¹. 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 Diversity Data Officer (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 Equality and Diversity Officer (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.

¹ rC110.3.e.iii.i

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 DDO) 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 a 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. Provide reassurance that further consent will be sought if there is a risk an individual could be identified prior to publication.

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](#)

You should 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

SEX AND GENDER IDENTITY QUESTIONS

Sex and gender identity have often been conflated in monitoring exercises. It is important to appreciate the legal status of each and to be sensitive about how questions are framed. Our advice here is based on the [latest judgement](#) on this question²

Sex is a protected characteristic under the equality act. Individuals should respond to a sex question on the basis of the answer on their birth certificate or gender recognition certificate (a document which allows people to change their legal gender). The current terminology for a sex question is: What is your Sex? With options restricted to Female; Male; Prefer not to Say.

Gender reassignment (transgender) is also a protected characteristic.

There is an option for a **gender identity** question. This asks, 'Is the gender you identify with the same as your sex registered at birth? [Yes/No/Prefer not to Say] and the option to record gender identity [Open].

MONITORING SOCIAL MOBILITY

Although not a protected characteristic it is important that we monitor socio-economic background – and in particular increase disclosure in this area where there are extensive data gaps (this may require additional reassurance on confidentiality). Current questions are:

- a) If you went to university (to study a BA, BSc or higher), had either (or both) of your parents or carers attended university by the time you were 18? [Yes/No/I don't know/I didn't attend university/Prefer not to Say]
- b) Did you mainly attend a state or fee-paying school between the ages 11 – 18? [UK non-selective state school (e.g. comprehensive)/UK selective state school (e.g. grammar)/UK fee-paying School (private/independent)/UK fee-paying supported by a means-tested scholarship/bursary/Attended School outside the UK/Prefer not to say]
- c) If you finished school after 1980, were you eligible for Free School Meals at any point during your school years? [Yes/No/Not applicable/Don't know/Prefer not to say]

² ONS Census 2021

A number of social mobility organisations recommend additional questions and differentiating between state selective and non-selective state school as outlined above [See (b)]. According to research the level of disadvantage faced by those in selective state schools is the same as the level of disadvantage faced by those in fee-paying schools.³

Bar Council asks the additional question below on the Pupillage Gateway [this question provides a more reliable indicator of socio-economic background when cross referenced with the other questions]. It is optional for your monitoring purposes, but you may find it helpful if you wish to add it as an additional question.

Please tell us about the occupation of your main household earner when you were aged 14.

If this question does not apply to you (because, for example, you were in care at this time), you can indicate this below.

Please select the one which best describes the sort of work your primary household earner undertook at this time.

- Barrister or judge**
- Modern professional occupations** such as: teacher, nurse, physiotherapist, social worker, musician, police officer (sergeant or above), software designer.
- Clerical and intermediate occupations** such as: secretary, personal assistant, clerical worker, call centre agent, nursery nurse.
- Senior managers or administrators** (usually responsible for planning, organising and co-ordinating work, and for finance) such as: finance manager, chief executive.
- Technical and craft occupations** such as: motor mechanic, plumber, printer, electrician, gardener, train driver.
- Semi-routine manual and service** occupations such as: postal worker, machine operative, security guard, caretaker, farm worker, catering assistant, sales assistant.
- Routine manual and service occupations** such as: HGV driver, cleaner, porter, packer, labourer, waiter/waitress, bar staff.
- Middle or junior managers** such as: office manager, retail manager, bank manager, restaurant manager, warehouse manager.
- Traditional professional occupations** such as: accountant, solicitor, medical practitioner, scientist, civil / mechanical engineer.
- Long term unemployed** (claimed Jobseeker's Allowance or earlier unemployment benefit for more than a year)
- Retired**
- This question does not apply to me**
- I don't know**
- I prefer not to say**

³ <https://www.suttontrust.com/wp-content/uploads/2019/12/Elitist-Britain-2019.pdf> (p. 13)

Caution:

All **data storage** is important and if you hold data you need to be completely confident of data storage and confidentiality arrangements.

6. What are the current consent rules?

You need to write to all members of chambers seeking consent to process their data including their diversity data⁴ and many chambers seek consent as part of any specific workforce monitoring exercise. You must also inform individuals that they can withdraw consent at any time.

7. Is there still a limit on publishing data on specific groups e.g. sexual orientation and religion & belief – the rule of 10.

No. The rule has been relaxed. As long as individuals in any specific category give their consent to their data being published then Chambers can do so. For example, if you had 5 members of chambers who identified as Gay, and 4 had given consent. You could publish that you had 4 members of chambers who identified as Gay⁵.

8. 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.

⁴ BSB Guidance: Section 7/para 2.(t) (iii)

⁵ BSB Guidance: Section 7/para 10

9. 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?

BSB Rules have changed thanks to lobbying from the profession so it is much easier to publish data now on all protected characteristics – subject to you taking steps to ensure that you protect the anonymity of any member who has not provided consent. Securing consent should therefore be a first priority.

Irrespective of this, good practice is that no individual should be identified through your reports so look at how best you can present the diversity of your members without presenting data in such a way that individuals can be identified. This may mean you don't differentiate on the basis of seniority/practice areas/different ethnic groups, religions and/or sexual orientation etc.

10. Is it OK to use the term BAME?

It is no longer good practice to use the term BAME (See Bar Council guidance [here](#)). It is important to use terms people recognise and identify with. It is also important to recognise simply grouping every individual from an ethnic minority background into one homogenised group is misleading since the experiences and issues faced by different groups are very different. To really understand what is going on you may wish to split barristers by their ethnic background.

11. 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.

12. 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.

See BSB's [E&D Rules](#)

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.

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 should be collected using the [model questionnaire](#) provided by the BSB

rC110.3

.q The Diversity Data Officer shall invite members of the workforce to provide diversity data in respect of themselves to the Diversity Data Officer using the model questionnaire in Section 7 of the BSB's Supporting Information on the BSB Handbook Equality Rules, which is available on the BSB's website;

.r The Diversity Data Officer shall ensure that such data is anonymised and that an accurate and updated summary of it is published on chambers' or BSB entity's website every three years. If chambers or the BSB entity does not have a website, the Diversity Data Officer shall make such data available to the public on request;

.s The published summary of anonymised data shall:

.i removed;

.ii **exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals' consent;** and

.iii subject to the foregoing, include anonymised data in relation to each

.t The Diversity Data Officer shall:

.i ensure that chambers or BSB entity has in place a written policy statement on the collection, publication, retention and destruction of diversity data which shall include an explanation that the provision of diversity data is voluntary;

.ii notify the workforce of the contents of the written policy statement; and

.iii ask for explicit consent from the workforce to the provision and processing of their diversity data in accordance with the written policy statement and these rules, in advance of collecting their diversity data.

BSB GUIDANCE ON MONITORING

gC145 For the purpose of Rule rC110 "regular review", means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that "regularly" should mean annually. In respect of managers of a BSB entity or tenants, it is likely to be considered reasonable that "regularly" should mean **every three years** unless the numbers change to such a degree as to make more frequent monitoring appropriate.

gC146 For the purposes of Rule rC110, "remedial action" means any action aimed at removing or reducing the disadvantage experienced by particular relevant groups. Remedial action cannot, however, include positive discrimination in favour of members of relevant groups.

Note 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:

November 21

- 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.”](#)