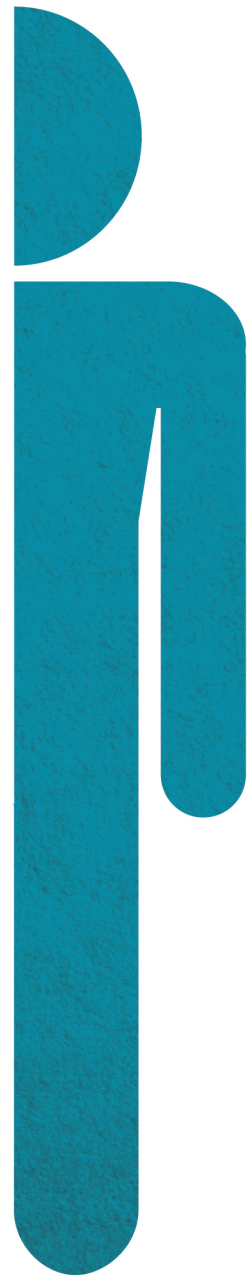




The Bar Council



The Bar Council's
**Monitoring
Work
Distribution
Toolkit**

Part 1: Sex

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Introduction

Equality and diversity remain pressing issues at the Bar.

2019 marked 100 years since women were finally able to become lawyers. The Bar has come a long way since then with more women than men now being called. Despite this progress, women are still outnumbered by men in almost all areas of practice and there are far fewer senior women. Black and minority ethnic barristers are underrepresented from pupillage onwards and there are still very few disabled barristers¹.

Work to better understand why there is still a lack of diversity at the Bar, particularly among more experienced barristers, found that there remain real barriers to progression. Whilst it is the case that maternity, returning to work and balancing care for a family are all significant barriers, problems commence before starting a family is even a factor².

Central to any intervention aimed at increasing diversity at the Bar has to be a focus on *how work is distributed* since which barristers receive work and receive the best paid work has a significant impact on who can develop and sustain a thriving practice, especially in light of childcare costs which can be significant.

The clearest way to monitor how work is distributed is to analyse the distribution of income (otherwise referred to as receipts) to barristers with reference to characteristics such as sex. This way chambers will be able to see, at a glance, who is thriving and who may be struggling. As knowledge increases so too will chambers' understanding of whether a barrister is 'on track' or if they need more support with marketing, clerking or mentoring. Equally importantly, chambers will be able to understand whether there are any barriers to equitable access to the best briefs and then work towards mitigating the impact of those barriers.

This toolkit is the start of a new set of guides which will provide chambers with guidance as to the ways in which monitoring income/receipts can be done and used

¹ <https://www.barstandardsboard.org.uk/uploads/assets/1fda3d4b-c7e3-4aa8-a063024155c7341d/diversityatthebar2018.pdf>

² <https://d17g388r7gqnd8.cloudfront.net/2019/01/WCWF-Back-to-the-Bar.pdf>,
<https://www.counselmagazine.co.uk/articles/equitable-briefing>

to assess the distribution of income and the equitable distribution of work. The focus on this toolkit is sex. It provides practical guidance on how to monitor income data and what steps to take if problems are identified. Part 2 will provide guidance on monitoring work distribution by race and more guides will be developed over the coming months.

Income monitoring can create a positive culture within chambers

Before turning to chambers' regulatory obligations, it is important to stress that income monitoring can create a supportive, constructive culture within chambers.

In November 2019, the Bar Council circulated a survey to chambers seeking feedback on existing income monitoring practices. Disappointingly, very few responses were received which may indicate that income monitoring is rarely undertaken.

However, information has been received concerning a set which has a proactive and transparent approach to pay monitoring. At this chambers, all members' monthly receipts are placed into a securely distributed spreadsheet and circulated amongst all members of chambers. Each member's monthly receipts are shown against their name thus allowing for complete income transparency. This model results in a climate of trust and facilitates meaningful debate around income issues. It soon started to be understood that monthly receipts are variable and do not reflect how much work a member has done in that month or indeed preceding months, but it does allow for a snapshot as to how members are faring in terms of their income. This allows for supportive measures to be put into place, if needed or requested. It is sacrosanct that this shared and non-anonymised income information is not sent to anybody outside of chambers.

Another large set analyses members' receipts annually, looking at the top quartile to celebrate success at a general meeting, and at the bottom quartile to discuss where

more support or intervention is needed. Again, this allows the chambers to keep track of barristers who may be falling behind their peers.

There are many variables which determine a barrister's income: their chosen practice area, the type of cases they take on, the hours they work, their engagement in marketing activities and promotion, the pro bono work they do, where they work, the quality of their work...the list goes on. Barristers at the self-employed Bar have these choices. Indeed, many people choose the Bar because they want the freedom to make these choices.

But, there are other factors which are beyond individual barristers' control which have an impact on income: whether their clerks put them forward for work, the attitudes and briefing practices of clients/solicitors, their ability to access marketing opportunities, the opportunities to be led in high-profile or lucrative cases, whether they have support/sponsorship by senior members...this list also goes on.

Monitoring income can only help chambers by giving a rough indication as to how well a barrister is doing compared to others at a similar stage/practice area.

Chambers can then use this information to consider if any differences are appropriate and based on decisions a barrister has made about their practice and the context in which they're working, or because of an unfair reason which the barrister might need support in addressing.

Whilst different chambers may favour different schemes, and there are five suggested models outlined below, transparency can foster trust, accountability and the opportunity for targeted support measures.

Regulatory obligations

Importantly, monitoring the distribution of work, through an analysis of income, is consistent with barristers' regulatory obligations.

Rule C12 of the [BSB Handbook](#) forbids all regulated persons from discriminating unlawfully against any other person because of a wide range of characteristics, including but not limited to sex, pregnancy and maternity.

Further, Rule C110 contains detailed provisions which dictate that all persons regulated by the BSB must take reasonable steps to comply with the equality and diversity rules contained in the BSB Handbook. These rules place obligations on barristers to ensure that chambers have:

- a written equality and diversity policy;
- a written plan for enforcing the policy;
- at least one Equality and Diversity Officer (EDO);
- regular reviews of the number and percentages of its workforce from different groups;
- regular reviews of the allocation of unassigned work by collecting and analysing data broken down by gender;
- processes for investigating the reasons for any disparities in data; and
- means of taking appropriate remedial action.

Self-employed barristers must also ensure that the affairs of their chambers are conducted in a manner which is fair and equitable for all members of chambers, pupils and/or employees (as appropriate), which includes, but is not limited to, the fair distribution of work opportunities among pupils and members of chambers.

The BSB guidance to Rule C110 is clear that chambers are expected to use the means available to them under their constitution to take reasonable steps to ensure that equality and diversity policies are enforced.

It follows that there is an expectation from the BSB that income will be monitored so as to understand the distribution of work by reference to sex.

Moreover, chambers which take proactive steps now to ensure that income is being monitored and that any appropriate remedial steps are taken will find themselves in a far better position to address any complaints, concerns or grievances which might be raised in the future.

Structure of this guide

Section A sets out various methodologies which chambers could deploy in order to analyse the distribution of income in chambers in order to understand whether there are any disparities in income in relation to sex.

Section B outlines practical steps which can be undertaken within chambers to remedy any difficulties identified during the monitoring process.

Annex A contains a generic flowchart outlining the practical steps which chambers should take as part of an income monitoring process.

Section A: Methodologies

There are five models which could be adopted to monitor the distribution of income within chambers and its relationship to sex.

Model 1: High/Low receipts vs seniority

Sex of barristers with highest and lowest annual receipts is disclosed by reference to call. This would allow chambers to identify if one sex is consistently earning the most or the least in different call bands.

Example

Using Model 1, a chambers decided to simply disclose the sex of the barrister with the highest and lowest annual receipts disclosed by reference to call.

Years call	Sex of barrister with highest receipts	Sex of barrister with lowest receipts
0-3	Female	Male
4-10	Male	Male
11-15	Male	Female
16-20	Male	Female
21-25	Male	Female
Silk	Female	Female

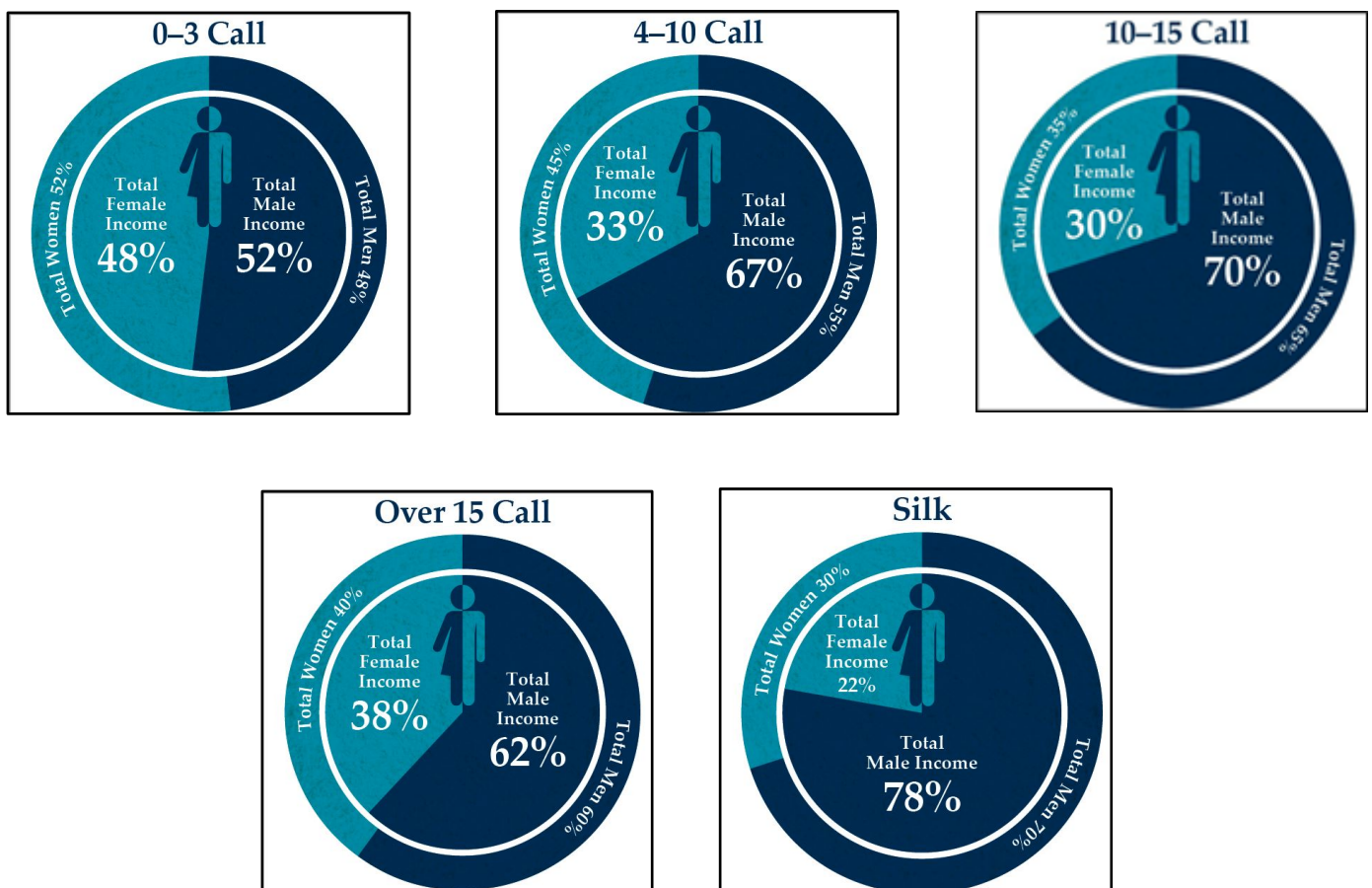
This provided a broad sense that as women become more senior their receipts fell behind their male colleagues until they reached silk.

Model 2: Income expressed as a percentage within call bands

Annual receipts within specific call bands are expressed as percentage by reference to sex. This would allow chambers to identify which sex is benefitting from the greater portion of income being received into chambers. This model also represents the overall number of men and women within each call band as a means of creating a meaningful comparison between the absolute numbers in any band and the way in which income is then distributed to them.

Example

Using Model 2, a chambers decided to add up all of the receipts of barristers within a particular call band and then represent in a pie chart the percentage of those earnings which were received by men vs women. In addition, secondary pie charts were included which showed the gender breakdown within each call band so that the data in each chart could be compared.



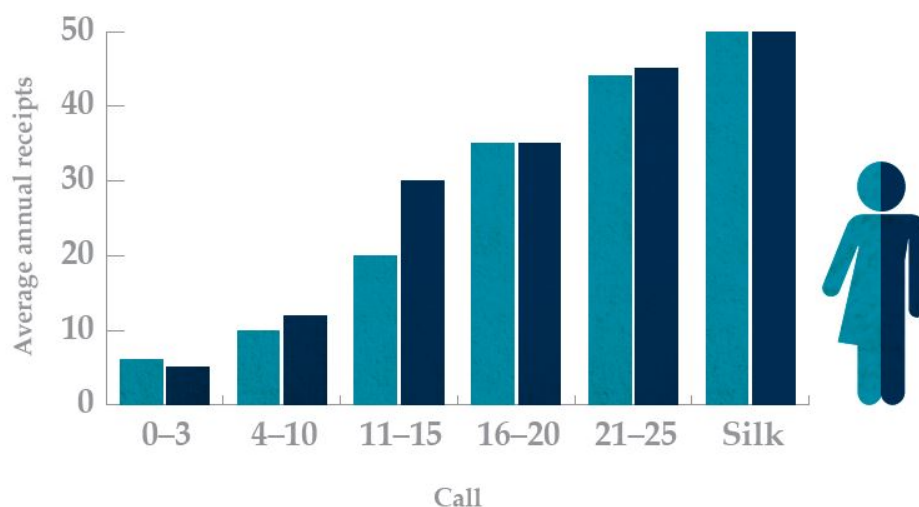
Model 3: Average receipts vs seniority

Average annual receipts of members of chambers within certain call bands are plotted against call according to sex so as to demonstrate the extent to which there is a disparity between average receipts between men and women in the same call bands.

Example

Using Model 3 for FY 2019/2020, a chambers created a table which plotted the average annual receipts of different call bands with reference to sex. It demonstrated a clear disparity between men and women between call years 11 to 15 but this evened out as seniority progressed.

Average annual receipts vs call and by sex

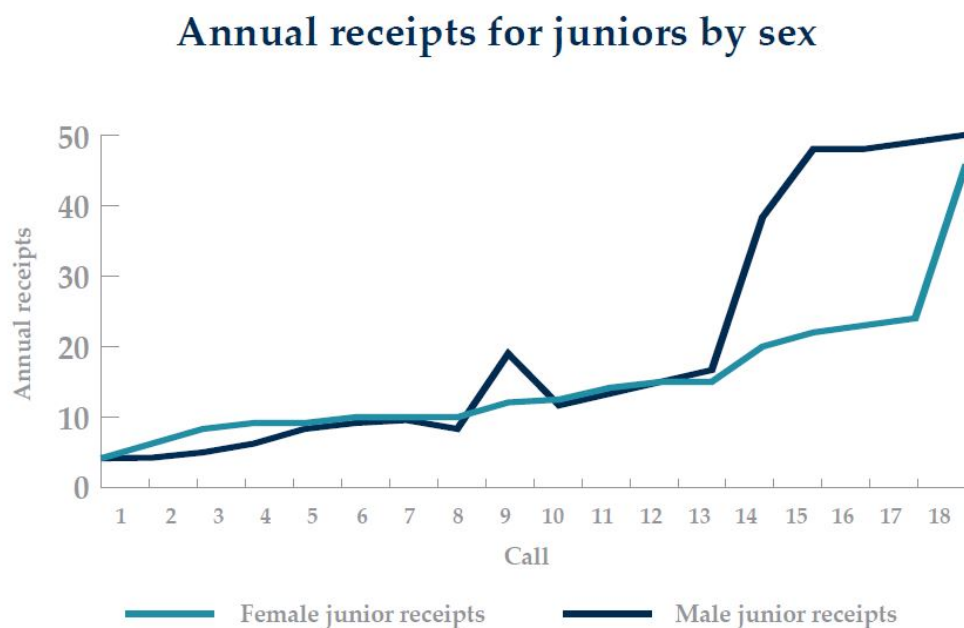


Model 4: Actual receipts vs seniority

Actual annual receipts are plotted against call according to sex rather than averaged (as in Model 3). This reveals any disparity in actual income between men and women within the same bands.

Example

Using Model 4 for FY 2019/2020, a chambers created a table which plotted call against annual receipts by sex for all junior barristers. It did not examine silks as there were too few to make the comparative exercise meaningful. It shows that men and women tend to earn broadly the same until around 22 years call when a disparity in receipts becomes clear with women receiving less than their male colleagues.



Model 5: Individualised data

Annual receipts from all members of chambers are collated and published without any analysis.

Example

Using Model 5 for FY 2019/2020, a chambers created a table which showed all barristers' receipts ordered according to receipts from the lowest to the highest number. The table shows that the higher earners tend to be men, although this

conclusion is reached on an impressionistic basis since Model 1 does not actually analyse any of the data; it simply presents it.

Name	Sex	Call	Receipts
A	Female	1	4.17
K	Male	1	4.17
RR	Male	1	4.25
L	Male	2	5.00
AA	Female	2	6.25
KK	Male	2	6.25
B	Female	5	8.33
PP	Male	3	8.33
QQ	Male	5	8.33
C	Female	3	9.17
D	Female	6	9.17
M	Male	3	9.17
LL	Male	4	9.58
BB	Female	4	10.00
E	Female	7	10.00
H	Female	8	10.00
MM	Male	5	10.00
O	Male	8	11.67
EE	Female	10	12.08
F	Female	9	12.50
P	Male	10	13.33
CC	Female	26	14.17
FF	Female	12	15.00

Name	Sex	Call	Receipts
G	Female	22	15.00
Q	Male	11	15.00
I	Female	24	16.25
U	Male	12	16.67
DD	Female	14	20.83
GG	Female	16	21.67
SS	Male	14	25.00
T	Male	14	28.33
TT	Male	16	31.67
HH	Female	silk	33.33
N	Male	silk	33.33
J	Female	silk	37.50
S	Male	22	37.50
W	Male	13	38.33
Z	Male	20	38.33
R	Male	silk	41.67
X	Male	silk	41.67
Y	Male	silk	43.33
NN	Male	18	44.17
OO	Male	silk	44.17
JJ	Female	18	45.83
II	Female	20	46.25
V	Male	silk	50.00

Advantages and disadvantages of each model

There are advantages and disadvantages to each model as follows:

1 High/Low receipts vs seniority

- This model provides the most “high level” analysis of income data. It is insufficiently detailed to demonstrate the degree of any income disparities relating to sex or the extent of the problem.
- If there are unusually low paid members of chambers, it may very easily lead to an unrepresentative view of chambers.
- Model 1 does not actually reveal any income data which may be considered attractive by some chambers.

2 Income expressed as a percentage within call bands

- This model would highlight the extent of any income disparities.
- Some of the pie charts might become unrepresentative if there are unusually high or low paid members of chambers.
- It does not actually reveal any income data which may be considered attractive by some chambers.

3 Average receipts vs seniority

- Since this model uses averages, it will be less skewed by outlier data.
- It is most appropriate with a large set as it needs extensive data for the use of averages to be justified.
- This model does reveal actual income data as opposed to relative income data which some chambers might consider unattractive.

4. Actual receipts vs seniority

- It clearly pinpoints any call levels where sex plays a greater or less role.

- Whilst outlier data would skew the chart, it would be more obvious where that was happening since the data is represented in increments by call rather than call brackets.
- This model does reveal actual income data as opposed to relative income data which some chambers might consider unattractive.

5. Individualised data

- This is the more transparent model in that it lists the name of the individual against their income.
- One major downside is that it simply presents data rather than analysing it. This type of modelling should probably be complemented with an additional model, perhaps Model 4, so that any themes could be easily identified.

Factors to consider when choosing a model

When it comes to choosing one or more models for chambers, the following factors should be considered:

- Is there likely to be resistance to income monitoring? It is recognised that income monitoring may come as a “cultural shock” to chambers. Whilst models 2 to 5 guarantee greater levels of transparency, initially choosing model 1 which is “higher level” in its analysis might lead to greater acceptance of income modelling in the early years. Once income monitoring has become more accepted, it would then be appropriate to move to more meaningful income monitoring.
- Would it be appropriate to have different models for different committees? For example, the most transparent models, such as models 4 and 5, might be most appropriate for a dedicated income committee which is tasked with ensuring that proactive steps are taken to eliminate inequality. Whereas the

remaining models, which involve the sharing of less personal information, might be more suitable for sharing with all members of chambers.

- Could the models be more usefully tailored to individual chambers? There are numerous variations within each model which could be used to tailor the process according to the structure of chambers, such as:

Collecting data over shorter or longer time periods e.g. quarterly reviews

This might be more appropriate where there is limited annual variation in receipts so that meaningful monitoring can occur more often, which in turn will ensure that any equality issues are detected sooner rather than later.

Using billings data rather than receipts

If there is a wide discrepancy between billings and receipts because there is a high default rate, focusing solely on receipts might provide a misleading picture of the work which a barrister is receiving. Equally, if there is a long delay between billings and receipts, receipts might not provide an accurate picture of barristers' workload at the time of analysis.

Grouping data according to practice group or speciality

Many chambers will accommodate a wide variety of practice areas between which income varies a great deal. In those circumstances, it may be more sensible to analyse income data within each practice group or speciality.

Using median average figures rather mean averages

Using median average means that the figures are not skewed by any outliers which might mask underlying trends e.g. one very high paid woman whereas most women are lower earners.

Creating a separate analysis for silks and juniors

In many chambers, the “market” between silks and juniors will be so different that it will be pointless to make comparisons across these individuals. In those circumstances it may be more sensible to analyse income separately for juniors or silks. Although equally, it should be borne in mind that if there are very few silks in a chambers conducting a separate analysis of the silks may not yield useful data.

Members of chambers may legitimately identify other modifications to the models provided that they do not prevent meaningful analysis of the relationship between sex and income.

Personnel involved in modelling

Before modelling is undertaken, chambers should decide (i) which model to use (ii) whether any modifications are required (iii) who should undertake the modelling and with what information, and (iv) which committees, members of chambers and other individuals will be entitled to see the outcome of the modelling.

Ideally, the Data Diversity Officer (**DDO**) should be responsible for collating the necessary information and carrying out the analysis required under the chosen method of presentation.

A guide to the role of the DDO, whom all chambers should have appointed, has been published by the Bar Standards Board.³

³ See ‘Supporting Information – BSB Handbook - Equality Rules’, pages 19-24, which is available at <https://www.barstandardsboard.org.uk/uploads/assets/bea4dc04-7acd-49a8-98a23a4d345f644d/8b833ea5-5d8f-4d67-a1156687cbdcce27/Supporting-Info-Chambers.pdf>.

The DDO, together with the EDO, should already be gathering and analysing the data diversity information that chambers are obliged to publicise on their websites under the Code of Conduct.⁴

Using the DDO for this exercise is the best option if they are an employee. However, if they are also a member of chambers, there may be concerns about them having visibility of information that details other members' earnings. In this case, the role of collating and analysing the information should fall to another trusted employee of chambers, ideally someone with understanding and insight into financial data such as a senior fees clerk.

The person collating the data should also liaise with the EDO and members of any income committee to work out which model of presenting it would work best for their chambers, in accordance with the guidance set out above.

The person collecting the data should then ensure they have the systems/software at their disposal. Most chambers management software packages allow you to collate the data and generate reports. Get in touch with the provider for more information.

Once the methodology has been chosen, the DDO or staff member should collate the relevant data and prepare the analysis, before presenting both to the EDO (unless they are the same person which does occur in some chambers). The EDO will then decide how the analysis should be presented to chambers management committee. Consideration should be given as to whether any data should be anonymised. It is possible that the information should be presented on an anonymised basis.

It is important that no one is able to influence the DDO or EDO so as to conceal pay inequalities before discussed at a management committee level.

⁴ See 'Supporting Information – BSB Handbook - Equality Rules', page 19, which is available at <https://www.barstandardsboard.org.uk/uploads/assets/bea4dc04-7acd-49a8-98a23a4d345f644d/8b833ea5-5d8f-4d67-a1156687cbdce27/Supporting-Info-Chambers.pdf>.

There should also be a plan in place to ensure that appropriate information is provided to all members of chambers once the modelling has been completed. This does not necessarily mean that members of chambers are entitled to see all of the modelling information, but, at the very least, they should be informed of the broad conclusions which the modelling exercise has revealed.

Special cases

Clearly, quantitative evidence derived from the data collation and modelling may not provide the whole picture of some individuals' access to work and income in any period. For example: a barrister may have been undertaking a period of parental leave / sabbatical leave / compassionate leave, or a barrister may have a disability which restricts their practice or there may be personal matters which have limited their ability to work.

Nevertheless, the presence of such individuals within the data set should not be used as an excuse either to exclude them from the data collation exercise entirely or simply to discount them from the overall final analysis. Instead, the Bar Council encourages chambers to include *all* members in the data collation in the first instance and only then consider carefully whether factors have affected individual data.

In some circumstances it may be appropriate to safely discount their data (for example, an unexpected period of absence due to an accident) but chambers should be careful not to exclude data which may be relevant when determining whether sex is a role in earnings.

For example, it might be tempting to remove the income data of women returning from maternity leave on the basis that this period of time is not necessarily representative of their practice. However, in reality, understanding the impact of maternity leave on women is an important matter if chambers are to proactively

ensure that new mothers are able to excel when they return to work and the impact on them financially is minimised.

Where there is outlier data, it would be safest for chambers to annotate or otherwise record the reasons for unusual or exceptional data rather than remove it altogether.

Alternatively, if the inclusion of outlier data truly leads to misrepresentation of the overall picture then rather than deleting the outlier data, modelling should be undertaken both with and without the data so that there is full transparency. This will ensure that inconvenient data is properly analysed and understood rather than simply discounted.

Finally, undertaking the data collation and modelling on an annual basis should enable chambers to track whether outliers are overcoming any income disparities or whether they are continuing. This will be valuable information when it comes to taking proactive steps to remedy any problems faced by individual members of chambers or certain groups.

Confidentiality

Chambers will need to consider the right approach towards confidentiality so as to ensure that sensitive commercial information is not shared externally. Constitutions and relevant policies should be reviewed carefully.

Further, where personal information concerning income data and sex is being analysed then the GDPR is likely to be engaged. Potentially, special category might also be processed depending on the methodology and approach adopted by chambers. Ordinary personal data and special category data can be lawfully processed provided one of the conditions in Articles 6 and 9 are met. Chambers should carefully consider which provisions of Articles 6 and 9 (if applicable) will apply to their income monitoring activities. Chambers should also ensure that the

income monitoring process complies with the data protection principles embodied in the GDPR.

Communicating the income monitoring process

It is crucial that chambers explain to members why income analysis is being undertaken and its important role in monitoring how work is distributed which in turn demonstrates a commitment to equality and diversity within chambers.

It should be stressed that monitoring income data by reference to sex is not a threat to high earners in chambers. Committing to sharing outcomes and repeating the process annually should alleviate concerns in the long term.

A commitment to equality and diversity will attract the best candidates in the future, lead to retention of talent and reinforce the notion that chambers are part of the modern world where income monitoring is now the norm. This is why it is important that the lessons learnt from internal modelling is shared appropriately rather than being withheld.

Section B: Practical Steps

If monitoring of income reveals disparities linked to sex, these are some of the practical steps chambers can take:

Chambers leadership/committees:

- Create an internal taskforce to lead on identifying ways in which chambers can support barristers, regardless of sex, to reach their full potential.
- Organise mandatory training (or refresher training) for barristers and their staff on the equality and diversity rules and fair allocation of work. The Bar Council offers these courses (<https://www.barcouncil.org.uk/training-events/training-and-workshops.html>). This can be a useful space within which to explore and challenge stereotypical views about female barristers vs male barristers.
- Ensure policies on fair access to work, parental leave, discrimination and harassment, flexible working and reasonable adjustments meet recommended best practice as well as comply with the minimum BSB Handbook standards and guidance; see, for example <https://westerncircuit.co.uk/wp-content/uploads/2019/11/Back-to-the-Bar-Retention-and-Progression-After-Parental-Leave.pdf>.
- Use or adapt existing software packages to monitor unassigned work and allocation between those with protected characteristics, and the extent to which juniors are led by seniors in chambers, and regularly to review patterns and potential remedial measures.

- Consider moving to greater or complete transparency in chambers about the monthly income levels of identified individuals so as to encourage the fair allocation of work.
- Encourage constant communication and regular meetings with clerks/practice directors with a view to positive engagement on how a barrister is progressing, if they are happy with their workload and support and to review home/work balance, career planning, wellbeing and finances. It may be appropriate to agree a firm plan of action with regular review meetings.

Senior clerks/practice managers:

- Put in place regular and effective practice management meetings which include:
 - Discussion about whether the barrister is happy with their practice, the sort of work they are getting and income levels;
 - Feedback from clients,solicitors,colleagues;
 - Review of flexible working – do they feel supported and able to achieve the balance they want;
 - Analysis of the marketing they’ve engaged in and support to be more active in marketing if appropriate;
 - Long term plans – what are their ambitions and what support do they need to get there; and
 - An action plan which can be reviewed at each meeting.
- Review the ways in which briefs are distributed:
 - How is unallocated work distributed?
 - How do clerks discuss and “sell” barristers to solicitors?
- Review marketing opportunities:
 - Who’s engaging in marketing?

- Are some barristers missing out because the time /location/ activity doesn't work for them?
- Are some practice areas better supported by marketing than others?
- Is sufficient notice of marketing events provided so that childcare can be arranged?
- Are there any unconscious prejudices about female barristers and the types of work that they do e.g. high value, commercial, corporate clients being better suited to male barristers?
- Are female barristers given sufficient opportunities to showcase their expertise, for example, delivering workshops, papers or lectures?

Members of chambers:

- Do senior male barristers lead female juniors in an equitable way? If not, do you need a system to ensure everyone has access to these important opportunities?
- Do you engage in practice management meetings and support a culture of ongoing feedback and active practice management? If this approach becomes the norm, women and others who are being left behind will be better supported.
- Do male barristers proactively invite female barristers to networking events?
- Do male colleagues have greater "one to one" time with clerks or sponsors than their female counterparts, for example, lunches or afterwork drinking?

For further information on equality and diversity initiatives, the Bar Council has issued numerous guides, tools and advice packs to assist barristers and their staff which are available [here](#).

[December 2020]

Annex A: The whole process

