The Bar Council

BAR COUNCIL EQUALITY & DIVERSITY GUIDES
TARGET SETTING FOR EQUALITY DIVERSITY & INCLUSION WORK

Target setting is important. Targets act as a catalyst for change. They enable us to understand if we are making progress and if we are achieving our objectives.

This document aims to help chambers set targets to support progress and effective evaluation of equality, diversity, and inclusion (EDI) initiatives.

It is designed to support the Bar with actioning the target setting recommendation in the Race at the Bar Report, but it will support target setting in all areas of EDI.

We include examples of targets in the areas of access, retention, progression, and culture

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1. What is a target?

Objectives tell you the direction you're moving in.

Targets tell you how far you want to go.

Neither one defines how you get there; that's a matter of strategy.

Targets tend to be precise and quantifiable.

Objectives tend to be vaguer than targets indicating where you are going but not necessarily how far.

For example, an objective might be to increase diversity, while a target would be to increase the number of women or Black or Asian members by 5% over the next 12 months.

Objective setting and target setting are also different. Setting an objective is relatively simple, but within any given objective there may be several different targets.

THE DIFFERENCE BETWEEN QUOTAS AND TARGETS

Targets are aspirational goals as opposed to fixed requirements. Quotas, on the other hand, are mandated outcomes, that is they must be achieved.

Quotas are usually set externally by a body with authority to impose them on organisations.

Quotas in employment and education are numerical requirements for hiring, promoting, admitting and/or graduating members of a particular group.

Theoretical example:

Quota: A requirement is set that 5 of 10 places on a management committee are reserved for women. Therefore, there is only the option to select women for 5 of the 10 positions: regardless of any other factors.

Target: Women are underrepresented on the management committee (20%), so a target is set to increase representation to 50%. The organisation can take proactive steps to achieve this goal and still consider all relevant factors in their selection for positions.

Quotas are not lawful in most instances[1].

Further Reading: CIPD Quotas and Targets: How do they affect diversity progress

[1] In the past a quota based approach was applied with all-women shortlists as a positive action practice intended to increase the proportion of female Members of Parliament (MPs) in the UK. This was used by the Labour Party and Liberal Democrats and was enabled only under a specific law (The Sex Discrimination (Election Candidates) Act 2002 - extended to 2030 by the Equality Act 2010).

2. Why have targets?

Setting targets helps you deliver the strategic changes that you want to make.

Targets will:

- Help set priorities
- Define success
- Give you focus and clarity
- Enable you to measure progress
- Build accountability
- Inform action
- Help you to stay motivated

As a result, you are likely to see swifter changes when addressing inequality. For this reason, the Bar Council is now advocating for target setting[2].

Evidence supports this approach. For example, a number of chambers have found signing the Women in Law Pledge and setting targets has supported their work in on gender equality.

> **So far, having ethnicity targets in place has already proved immeasurably valuable in helping to make change happen.**
>
> Rachel Holmes, CEO, Matrix Chambers (2021)

Another good example of successful target setting is the Davies report which set out to increase the number of women on the boards of FTSE companies.

3. What happens if you don't meet your target?

You can set your own targets and there is no sanction if you don't meet them.

Failure to meet your targets should however prompt a review to establish why you didn't meet a target, and what you need to change if you want to achieve your objective(s) in future.

If you don't meet your target, you should:

- Ask yourself if the target was achievable

[2] See Race at the Bar report

- Pinpoint where things went wrong
- Identify the barriers to achieving your target and consider how best to address them.
- Develop a new set of targets and or a new strategy to achieve the original ones

Reviewing what may have gone right or wrong is a positive exercise because it stops you expending time and resource on an activity which isn't delivering the results you want.

4. Types of targets

Targets can be outcome or process based. Process targets are things you have control over (e.g., publishing a report or setting up a mentoring programme to improve pupillage outcomes).

Outcome based targets are less easy to control and are related to the results you're aiming for (e.g., whether the report creates the change you want to see, or participants in a mentoring programme are more likely to secure pupillage).

TIP: It is important to have outcome-based targets and plan actions/processes with the aim of meeting those. Otherwise, it is too easy to say you've reached your (process based) targets, without any meaningful change having happened

Targets can also be quantitative or qualitative. An example of a quantitative target might be to increase the number of Black applicants applying to chambers by 20%, whilst a qualitative target might be improving chambers reputation with Black applicants. The problem with qualitative targets is they can be intangible and difficult to measure (see below).

Targets should be as ambitious as possible, whilst taking account of what is realistic within a particular time frame. Ambitious targets can help motivate everyone to put extra effort in, and keep you focussed on your long-term objective.

Targets should be SMART

Whilst we would recommend a mix of all types of targets, the key to making real and sustainable progress on EDI will be setting **outcome based, quantitative and ambitious targets**, e.g., supporting a member of chambers from an ethnic minority background/other under-represented group in Chambers take Silk within 3 years; or recruiting a Black pupil within 3 years; or reducing the gap between earnings of women and men up to 15 years call by 25%.

5. Steps in developing targets at the Bar[3]

> "In our experience, finalising the targets required numerous discussions, including to address some areas of confusion and disagreement. However, over a series of meetings, where it was made clear that all were committed to making change, everyone involved was able to agree on a set of targets that are felt to be justifiable based on the data, appropriately challenging and nonetheless achievable.
>
> In short, whilst this is a difficult issue that can involve uncomfortable conversations, it is nonetheless possible to reach a very positive outcome"
>
> Rachel Holmes, CEO, Matrix Chambers (2021)

Note: Some steps may need to take place concurrently/in a different order

Step 1: Data collection

a) Collect relevant data within your organisation. Data on representation may already be available (e.g., from your last diversity data questionnaire), in which case it will simply be a case of finding and presenting the data. Be specific; consider dividing the data into:
   i. QCs, juniors, and trainees/pupils
   ii. Senior managers and junior staff

[3] With thanks to Matrix Chambers for sharing their process and experience.

iii. Practice management/clerks and other staff

For issues that do not relate to representation but to other factors, e.g., income disparities and work distribution, you will need to monitor the appropriate data in order to set targets in these areas. Toolkits to support monitoring work distribution can be found here for Sex and here for Race.

Depending on the make-up of chambers and the group for which you are setting targets, you may also consider dividing the data by practice area.

b) Collect the relevant data for the Bar. The BSB and the Bar Council are good sources for this information. The Bar Council and the Bar Standards Board collect data on the profession which can be used to support positive action. Bar Council data can be obtained here. BSB data can be found here. Additional data can be made available upon request via equality@barcouncil.org.uk. ONS data can also be referenced when considering action. Do note - there may be significant regional variation in local/regional population profiles.

Again, it is best to include as much detail as possible including:

i. QCs and juniors
ii. Enrolment onto the BPTC (or equivalent)
iii. Graduation from the BPTC (or equivalent)
iv. If your trainee/pupil recruitment is based on certain results, you might potentially even include graduation from the BPTC with a certain score

Using Appropriate Comparators

You should bear in mind that where representation is in line with the general working age population, this does not necessarily lead to equitable outcomes. For example, if you compare the proportion of Black applicants to Chambers against the general population of England & Wales, it may appear representative, whereas if you compared the proportion of Black applicants to the BPTC graduate population this may reveal under-representation (and a potential problem) in your recruitment outcomes.

Wherever possible use appropriate comparators e.g.

- when looking at your recruitment data it would be appropriate to use data on the number of law/BPTC graduates as a comparator as opposed to the working age population as a whole.
- if you are looking at retention or progression data, consider data for the Bar to ensure that outcomes are proportionate for different groups e.g., ethnic minority barristers or women.

TIP: Don't just look at your own data in a vacuum. Look at data for the Bar as a whole and see how action in your organisation can create change.

Step 2: Set parameters

a) Make a provisional decision on the scope of the targets. Do you need to set targets for recruitment, retention, progression, or a mixture? You might decide to start with recruitment, on the understanding that you will address progression down the line.
b) Agree on a "definition" of the group for which you are setting targets. For example, if you are setting targets for recruitment, inclusion, or progression of Black people, explain what you mean by "Black" (e.g., "of Black African or Caribbean heritage, including mixed race").
c) Identify who in your organisation is authorised to access the relevant diversity data and ensure the data is kept confidential to those people. Agree which information will be shared at which level (Diversity Data Officers/Equality & Diversity Committee, Management Committee, organisation-wide, externally).

Step 3: Identify areas of focus

a) Identify where the data shows there is under-representation or a disparity of outcome, and the extent of the under-representation/disparity.
b) The areas of focus should be as specific as possible so that you can address the relevant issues; for example, you may find that a group is underrepresented at the application stage (you do not have applications form a particular group). Alternatively, the data may show that the problem is at the selection stage; you have applications from diverse groups, but there is a disparity in who gets selected.
c) In theory, you might identify that there is no underrepresentation or disparity, in which case you may not need targets in relation to this area, although in practice, there will be a reason for beginning this exercise
d) If the issue is not under-representation or disparity of outcome, it may be worth examining if a focus is required on culture (inclusion, belonging and/or anti-harassment and anti-bullying)

Step 4: Draft targets

a) Based on the data, draft short- and long-term targets to act as a catalyst and maintain the momentum.

b) If you choose to set the target as a percentage (e.g., bring the percentage of Black members up to X% of members in the next Y months/years), also include what that would entail in terms of absolute numbers (e.g., this will entail recruiting X Black members, assuming no other changes).
c) Share the draft targets with the appropriate people/committee. This may include the EDOs, Race Working Group, Equality & Diversity Committee etc.
d) Discuss the targets and amend as appropriate until the key stakeholders agree. Note that there is no "right way" to set targets, so it is unlikely that everyone will agree with the first draft. So long as the targets can be justified, it is good – in terms of both outcome and perception – to be ambitious. Challenging targets need not lead to a sense of failure if not achieved within the intended timeframe. Progress against the targets can still be celebrated and it can be used as an opportunity to learn lessons so that the target is ultimately achieved.

Step 5: Finalise targets

a) Share the targets with the Management Committee (MC), or whoever will be held accountable for the targets.
b) Ensure the MC (or whoever is accountable for the targets) has a good understanding of the background and rationale for the targets chosen. Confirm that they are committed to making progress against the targets, are prepared to be held accountable and that they publicise that commitment (at least internally).
c) Agree on a mechanism for taking steps to reach the targets and for monitoring progress. One basic step might be making this a standing item on the MC agenda.
d) Share/publish the targets as agreed. This may simply be a case of informing members that targets are in place.

6. Ideas for different types of targets

To help you consider what sort of targets you might want to set and in which areas, below are some examples.

a) Targets for recruitment

Example 1: A Chambers based in London reviews their pupillage recruitment data. Chambers identifies that whilst they have had a high number of

applications from Black and Asian candidates in the past 10 years, none of these candidates have obtained pupillage. Chambers decides to set an outcome based quantitative target to recruit at least 3 candidates identifying as Black or Asian by 2025. After setting this target, they set out a strategic route to achieve this goal which involves identifying reasons for the disparity so far and taking steps to address each of these.

Example 2: A Chambers based in Bristol finds that 97% of its pupillage applicants identify as White British, despite evidence of a more diverse population in the city and the country. Chambers sets a target to increase the diversity of its application pool to reflect the population within the next 5 years. They also set a short-term outcome based quantitative target that 25 people from underrepresented groups take part in a mini pupillage in chambers within the next year.

b) Targets for retention

Example 1: A Chambers reviews its data and finds that between 2010 and 2022 70% of female practitioners left their set between 5-15 years call. As a result, women are underrepresented at the senior end of chambers practice whilst being well represented at the junior end. Chambers sets a process-based qualitative target to gather evidence and produce an internal report analysing the reasons for female practitioners leaving the set.

Following this, chambers set an outcome-based quantitative target to reduce this figure to 30% within the next 4 years (by addressing the issues identified within the report).

c) Targets for progression

Example 1: A Specialist Bar Association reviews the QCA's silk appointments data for its practice area and finds that there are very few female QCs, and limited numbers of male QCs from an ethnic minority background and no female QCs from an ethnic minority background.
It sets outcome-based targets for each of the groups that are underrepresented in silk appointments for its practice area. To set achievable targets, the SBA takes

account of data showing who currently practices in their area, their ethnicity, sex, and year of call.
Based on this it arrives at a target for each underrepresented group e.g., at least 20 female silks within the next five years and within this at least 5 Asian female silks and at least 3 Black female silks etc. Taking account of its role, the SBA looks at how it can effectively work with practitioners and chambers to contribute to achieving this outcome based quantitative target and sets interim process-based targets for the actions it will take towards its attainment.

Example 2: A Chambers conducts a monitoring exercise of work distribution and finds disparities correlating to race and sex in relation to who gets assigned the most lucrative work. An analysis reveals that this issue is partly due to who gets opportunities for led work in certain areas. In response, chambers set a process-based target to create a fairer system for organising opportunities for led work.

d) Targets for culture

Example 1: An EDO confides in his head of chambers that he is struggling in his role because there is a lack of support and interest from members in addressing equality and diversity issues that he raises. He feels that a lot of the burden is on him to take forward initiatives and is honest about the fact that he feels isolated because he is one of the few Black members of chambers.

The HoC decides to raise these issues with the management committee who put in place a **process-based** target to create an EDI committee within chambers so that workload can be more fairly distributed.

They also set a process-based target to train all members of chambers in E&D and Race awareness within the next 3 years.

Example 2: A Bar based survey reveals that a high proportion of female barristers on circuit experience bullying and harassment. A target is set to reduce this figure by 50% in the next two years and 100% in the next five years by tackling the behaviours identified within the survey.

7. FAQs

Q: Can I positively discriminate to achieve my targets?

A: No.

THE DIFFERENCE BETWEEN POSITIVE DISCRIMINATION AND POSITIVE ACTION

Positive Discrimination is unlawful whilst Positive Action is lawful when undertaken in accordance with the Equality Act.

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 and in specific cases in the provision of goods, facilities, or services.

Previously positive action chiefly consisted of training and special encouragement to be offered on a limited and targeted basis to under-represented groups. This kind of action aimed to enhance access to jobs and service opportunities but did not permit selection for recruitment or promotion to take place merely because of under-representation. Section 159 permits what is usually impermissible: direct discrimination at the point of selection, because of the under-representation of people with a protected characteristic where two candidates are found to be of equal merit.

It is essential you understand the difference and ensure everyone is clear that you do not propose positive discrimination in achieving your targets.

Recommended reading:
https://www.barcouncilethics.co.uk/documents/positive-action/

Q: I know what targets we need to set based on the data, but I don't know how many people in chambers need to be consulted/involved. Is it necessary to have buy in from everyone?

A: You should aim to be transparent and maximise participation in the target setting process (see Steps 4-5 above) as far as possible. Whilst not everyone needs to play a leading role you want to ensure you have support of members/ your organisation with any targets you decide to put in place, otherwise they are unlikely to be achieved.

Visible leadership and effective communication to ensure widespread understanding of the issues is an important step in achieving your targets.

Q: Some of the areas where we might want to set targets involve factors beyond our control, e.g., QCA appointments and retention in underfunded practice areas. Is there any point in setting targets in these areas?

A: Whilst you should always aim to set targets in areas that you can influence, this may be to a greater or lesser extent. Ultimately many issues will be affected by the wider context but there will often be things you can do to contribute towards your aim. For example, as a Chambers you can't directly influence who is selected for silk or judicial appointment, but you can influence *who gets what work* opportunities and what support in their career. You can also work with other stakeholders (e.g., the Bar Council, SBAs, Bar Networks) to raise issues that are affecting you and seek support.

Q: We are unsure which areas to set targets in because of several different issues reflected in the data. How do we choose which areas to prioritise and in what order to work towards them?

A: Keep in mind that you are free to set your own targets and assign realistic time periods to each of them. Capacity should not be a barrier to setting as many targets as you need, as long as you are clear about the time required to achieve them.

When prioritising you want to consider which of your targets you need to achieve first in order to achieve others, as well as the extent of work required to attain the targets. Process based targets, e.g., setting up an E&D committee, conducing a data monitoring exercise, are likely to be the necessary first step. Outcome based targets; (e.g., recruiting x number of Black barristers/ retaining X number of women) are likely to follow.

If there is a target which will require significantly more work to achieve you need to assign sufficient resources to it and ensure a clear long-term strategy is in place to avoid delay. If there is a target that is more attainable for your organisation, then the time period for that target should be shorter to reflect this.

If you have any queries or need help, please contact equality@barcouncil.org.uk

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