



CBA response to the BSB Consultation on the Proposed New Equality and Diversity Conduct and Practising Rules

Introduction

The Criminal Bar Association represents about 3,600 employed and self-employed members of the Bar who prosecute and defend in the most serious criminal cases across England and Wales. It is the largest specialist Bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. Their technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts, ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained.

The CBA welcomes the proposed changes to the practising rules. As the consultation points out women and BME barristers are more likely to be working in the field of legally aided work and as such the benefit of these proposals will be felt particularly by our constituents.

- a) Do you agree that the new regulatory equality provisions should be integrated within the Code of Conduct?

Yes, for the provisions to have any weight they should be integrated within the code.

- b) Do you agree that the proposed new Conduct Rules should apply to all practising barristers including employed barristers and those who are managers or employees of recognised bodies?

Yes, we agree. All barristers whether employed or self-employed and those who manage barristers should be subject to the new conduct rules. They are not onerous and simply reinforce what should already be good practice and in indeed, in many instances, the law.

- c) Do you agree that the obligations should apply not just to barrister's own chambers or other place of business but also to any ProcureCo through which s/he obtains business?

Yes. It is likely that much of the Bar's future business will be conducted through ProcureCo or indeed in time other Alternative Business Structures. For the provisions to have any weight they must apply to all work carried out by the Bar.

- d) Do you think it is appropriate that the proposed rules place a personal obligation on all self-employed barristers to take all reasonable steps to ensure that the rules are complied with as opposed to putting the onus only on Heads of Chambers or those with responsibility for the administration of chambers?

The CBA does think it appropriate to place a personal obligation on all self-employed barristers. As the consultation points out, what is reasonable, will depend on the position held within chambers by that barrister. The CBA are of the view that this could be taken further. Whilst all barristers should have an obligation, we see no reason why 5.2R should not be mandatory for all Head of Chambers where the members exceed a certain number (say 5). This would add greater weight to the provisions whilst also providing something concrete on which more junior members could rely on to fulfil their own obligations. The explanation provided at the recent BSB event as to why the rule was not made mandatory was to cover a situation where the

management committee overrides the Head of Chambers. As all those on the management committee would be bound themselves by a duty to take all reasonable steps, we see this scenario as unlikely. If such an unlikely scenario were to occur, the BSB could always exercise their discretion when applying enforcement. Finally, the CBA would also suggest that an example of what is expected of a more junior member, alongside the Head of Chambers example in 5.4G.

- e) Do you agree with the proposed required that from 1 January 2013 that the member/s of chambers with the lead responsibility for the recruitment of tenants, pupils, clerks and mini-pupils and at least one member of every selection panel except in unforeseen and exceptional circumstances, who may be the same person, must have received recent and appropriate training in fair recruitment and selection processes?

Yes. This should already be good practice in sets of chambers and should be made mandatory. The CBA feels that the phrase “recent” is a little vague. The CPS “Expectation Document” requires training every 3 years, which perhaps is a little onerous. Perhaps an obligation to receive training every 5 years and to keep up with any significant changes to legislation. As mentioned below, the CBA see no reason why some of this training cannot be delivered by internal seminars within chambers to reduce costs.

- i. Do you believe the 1 January 2013 deadline to be realistic and achievable?

This will obviously depend on exactly when the proposed rule changes are announced, but assuming they will be introduced in 2011, this deadline is realistic and achievable.

- ii. Do you think the Bar Standards Board should regulate the training undertaken for this purpose?

Whilst it is not necessary for everybody to be trained by the

BSB, the CBA believes that all courses or training should be approved along the lines of the current CPD approval. This would enable those who had undertaken BSB training to cascade the training to others in chambers, whilst also providing CPD points. The BSB could perhaps also consider adding an E&D element to the CPD requirements, just as Ethics currently is for New Practitioners. This would ensure that all barristers, whether in a chambers, a sole practitioner or employed would undergo E&D training.

- f) In light of the Neuberger recommendation that all barristers involved in selection be trained, would you agree with a requirement that by 1 January 2014 every member of all selection panels involved in the recruitment of tenants, pupils, clerks and mini-pipils must be trained in fair recruitment processes?

Yes, we agree that this should be a requirement and believe it to be achievable by 1 January 2014.

- g) Do you agree with the proposed requirement that chambers recruitment and selection processes use objective and fair criteria?

Yes, we do.

- h) Do you agree with the proposed requirement that chambers must collect and analyse the actual numbers and percentages of barristers and pupils in chambers from different groups on an annual basis and that these groups must include as a minimum race and gender?

Yes agree that figures should be collected and analysed. The constitution of chambers actually changes very little from year to year, with only a few people joining or leaving. Therefore we believe that the figures for tenants need only be collected every two years. We feel that further guidance could be provided on how to analyse the figures with the BSB perhaps setting down some

benchmarks. Such marks would not be quotas but rather help guide the analysis. There is no mention in the rule about collecting the figures for staff. The CBA feel that these should also be collected and analysed under the rules. The influence of the clerks room on a person's practice and chambers overall is largely overlooked by this consultation. The CBA feel that it is important to ensure that the clerks are recruited in a way that is fair and objective but that they work in a way that is E&D compliant.

- i. Do you agree that this should be done annually?

As mentioned above, we think that the figures for pupils should be collected annually but for tenants every two years.

- ii. Do you think that data should also be gathered on disability?

Yes, there is no reason why disability should not be included.

- i) Do you agree with the requirement that all chambers must collect equalities data on applications for mini-pupillage, pupillage, and starter tenancies and analyse the success of different groups at each stage of the selection process on an annual basis and that these groups must include race and gender as a minimum?

Yes, we do. However we make it clear that "mini-pupillage" is at present an ambiguous phrase. It would be overly burdensome for chambers to collect figures on all those doing work experience, some of whom may only be in chambers for a day and may still be at school. Someone on a mini pupillage could perhaps be defined as "someone who is or has undertaken a law degree or conversion and will be in chambers for a week or more shadowing barristers. Such a mini pupillage may be assessed or unassessed."

- i. Do you agree that this should be done annually?

Yes we do.

- ii. Do you think that data should also be gathered on disability?

Yes, there is no reason why disability should not be included. Though when collecting and analysing the figures it should be borne in mind that not everyone is prepared to disclose a disability, especially conditions relating to mental health.

- j) Do you agree with the proposed requirement that chambers that take pupils must regularly review the allocation of work to pupils, tenants in their first three years and members returning from parental leave?

Yes, we do. Further guidance could be provided as to what this means in practice.

- i. Do you agree that this data should be required to be broken down by race and gender only?

As the aim of the rule changes is to remove discrimination of all kinds, the CBA fails to understand why this data should only be restricted to race and gender.

- k) Do you agree with the proposed requirement that all chambers must have a policy on parental and adoption leave?

Yes, we do.

- l) Do you agree with the proposed requirement that chambers must offer their members a minimum of 6 months parental leave, or leave following adoption?

As the current statutory maternity leave for the employed is 12 months, we are of the view that the same ought to be available to self-employed members of chambers. Especially with the changes to business structures that are likely

to take place over the coming years, it would be unjust if say, as procureco containing both self-employed and employed barristers had two different rules relating to maternity leave. In relation to paternity leave, chambers ought to follow the statutory requirements for the employed (currently 2 weeks) as a minimum but be encouraged to offer the same as maternity leave. Adoption leave should follow maternity leave.

- i. If not, would you agree with a requirement that chambers must offer members a minimum of three months parental leave or leave following adoption?

We are of the view that 6 months is already too little and therefore would resist reducing it to 3 months.

- m) Do you agree with the proposed requirement that where rent is paid on a flat rate basis, parental leave must be rent free?

The current rules relating to statutory maternity leave for the employed has the first 26 weeks at full pay and the next 26 weeks at statutory pay. Chambers ought to follow a similar structure, perhaps with the first 6 months rent free and the following 6 months at a reduced rent as a minimum.

- i. Would you agree with a rule requiring that the parental leave period must be rent free irrespective of whether the chambers rent is calculated as a percentage of fees earned or is a flat rate payment?

Yes. There is a significant problem of retention of women at the Bar. Providing a period of time rent free, even though the barrister is earning, encourages women to return to work.

- n) Do you agree with the proposed requirement that any member or pupil must have the right to return to her /his chambers as a tenant following a period of

parental or adoption leave?

This is currently ambiguously worded. Any person taking parental or adoption leave should be entitled to return at the same status they were when they left. However as currently worded, if a pupil were to go on maternity leave, they would return as a tenant regardless of whether or not they would have been taken on, which cannot be right.

- i. Do you agree that this right to return should continue for a period of at least a year?

The period ought to be the same as the period set down at question (l) above, which in our view should be 12 months.

- o) Do you agree with the proposed requirement that chambers must have written policies permitting members of chambers (male or female) to take career breaks and work flexible hours, or part time, or partly from home?

Yes, we do.

- p) Do you think that compliance with the any of the new regulatory requirements will place a financially onerous burden on chambers?

In general no, however please see answer to h regarding analysis of tenants in chambers.

- i. If so can you provide evidence of how the particular requirement might burden chambers financially and what revisions might be made to mitigate or remove such a burden?

- q) Do you think that the guidance is useful in understanding what is required by the new regulatory rules?

Yes, it is.

- r) Are there any areas not covered by the regulatory requirements and/or guidance which you think need to be covered?

As mentioned above, we believe that the important role clerks play in E&D issues is underplayed in the consultation. Figures relating to staff should be collated and perhaps a provision that as part of a chambers E&D policy, all members of staff should be E&D trained.

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