



# **Equality and Diversity Expectations Statement for the Bar**

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Printed by Blackburns of Bolton Ltd, tel: 01204 532121



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# Foreword



We are pleased to introduce the CPS Equality and Diversity Expectations Statement for the Bar. This Expectations Statement builds on earlier joint work on equality and diversity and the Bar Council's Equality and Diversity Code.

We are in the midst of far reaching reform of the Criminal Justice System. As part of this, we are modernising the relationship between the CPS and the Bar. This modernisation involves putting in place an agreed set of standards on equality and diversity.

There has been detailed consultation on the Statement. We are grateful for the comments received which have influenced the final format, including the reporting requirements.



The aim of this Equality and Diversity Expectations Statement is simple and shared. It is to provide a clear statement of expectations on equality and diversity for sets of chambers whose members prosecute or seek to prosecute on behalf of the CPS.

There are benefits in adopting and implementing this Expectations Statement, both for the CPS and the Bar. These include increased confidence that both CPS and the Bar are meeting their equalities duties and commitments when legal services are secured in this way; an assurance of consistency of equalities practice; improved prosecution practice; improved recruitment practice; and a more diverse talented Bar fit for prosecuting in 21<sup>st</sup> century Britain.

We look to all Chambers working for and seeking work from the CPS to implement the Expectations Statement. It provides an opportunity to demonstrate progress in equality and diversity practice.

Chambers will report progress at specified intervals to their local Joint Bar and CPS Advocate Selection Committees. The frequency of reporting will reflect the size of Chambers, with larger sets reporting progress annually. This self-reporting of progress will be supplemented by CPS led monitoring.

The implementation of the Expectations Statement will start in April 2007, with the first progress reports for large sets of chambers one year later. We are confident that it will help realise the shared vision of a Bar, which reflects the communities it serves, and where practice is fit for purpose in modern diverse Britain.

A handwritten signature in black ink that reads "Ken Macdonald QC".

Ken Macdonald QC  
Director of Public Prosecutions

A handwritten signature in black ink that reads "Geoffrey Vos QC".

Geoffrey Vos QC  
Chairman, Bar Council

# 1. Context

- 1.1 The CPS secures a range of external legal services each year. The service spends approximately £130 million of a total annual budget of £580 million on external legal services.
- 1.2 The CPS has a long standing commitment to and increasing positive reputation in respect of equality and diversity across all of its activities. As a public body the CPS also has positive duties to promote disability equality, gender equality and race equality across its activities including where relevant when it secures external services. The Bar Council itself has general duties to promote disability, gender and race equality. Both CPS and the Bar council also have obligations to ensure equality in respect of sexuality and religion or belief. Similar obligations are also forthcoming in respect of age.
- 1.3 Given the firm commitment to furthering equality and diversity and our legal obligations, the CPS has decided to put in place a clear statement of equality and diversity expectations with the Bar.
- 1.4 In setting out these expectations the CPS recognises that our objectives and duties in relation to equality and diversity do not overrule other laws or regulations on public procurement.

## Guidance on implementation

- 1.5 This Equality and Diversity Expectations Statement reflects the requirements of both the Bar Council's Code of Conduct and the Equality and Diversity Code for the Bar. The latter provides guidance on the implementation of good equality and diversity practice in Chambers and will assist Chambers in implementation of this Statement. Throughout this Statement, there is clear cross referencing where CPS expectations reflect the Bar Council's Code of Conduct and the Equality and Diversity Code for the Bar.

# 2. Purpose

- 2.1 The purpose of this expectation statement is to:
  - provide for the Bar a clear concise statement of expectations on equality and diversity when seeking to work and when working for CPS
  - ensure that the CPS can continue to meet its legal obligations to promote equality when it secures external legal services from the Bar.

## 3. Equality and diversity expectations

The following are the elements of a framework to address equality and diversity which the CPS expects to see in place and actively implemented in Bar Chambers from which it secures legal services.

### 3.1 Equality and Diversity Policy Statement and Actions

The CPS expects Chambers through which it secures legal services to:

- have a written policy statement of its commitments to equality and diversity
- have a timetabled action plan or set of actions in a wider Chambers Business Plan to implement this policy
- implement the policy and action plan
- report to its JASC and as required by CPS on achievements in implementing the Plan
- have a designated equal opportunity officer or equality and diversity officer (also required by the Bar Council's Code of Conduct para 404.2(d))

This policy statement should address recruitment of pupils and members; retention and career development; training; equal access to work and opportunities within chambers; reasonable adjustment to promote disability equality, maternity and parental leave and flexible working, and handling of complaints of discrimination and harassment; the outcomes the Chambers is seeking to achieve and roles and responsibilities in relation to the policy. These expectations are consistent with existing Bar Council Codes, in particular the Bar Council's Code of Conduct para 404.2(d) requires that Chambers have a written equal opportunity policy which will set out Chambers' policies in relation to each of the action areas in the Equality and Diversity Code.

### 3.2 Equalities monitoring

The CPS expects chambers through which it secures legal services to:

- monitor all applicants for pupillage and membership by disability, ethnicity and gender and likewise to monitor all appointees
- monitor all staff, pupils and members in chambers
- make publicly available the results of this monitoring to the JASC and to CPS as required.

These expectations are consistent with para 1.16 of the Bar Council's Equality and Diversity Code.

### 3.3. Addressing under-representation in Chambers

The CPS expects chambers through which it secures legal services to:

- analyse recruitment monitoring data at least annually
- take corrective action where there is significant under representation of any particular group compared to their representation in the potential applicant pool
- take corrective action where there are significant differences between those applying and those appointed to pupillage and as members
- take steps, including the setting of measurable objectives where necessary in terms of gender, ethnic and disability representation to help secure a more representative Chambers (including staff, members and pupils)
- focus recruitment efforts on addressing under representation
- evaluate its monitoring results against relevant benchmarks including Bar Council vocational course graduate data and pupillage data and begin to build up data on disabled practitioners and BVC students. (Guidance on relevant benchmarks is given in para 1.17 of the Bar Council's Equality and Diversity Code)
- report progress in addressing under representation.

These expectations are consistent with paragraph 1.16 of the Bar Council's Equality and Diversity Code. Further guidance for Chambers on monitoring and tackling under-representation is available in Annex E of the Bar Council's Equality and Diversity Code.

### 3.4 Positive action

In some circumstances it will be appropriate for Chambers to take positive action to address significant under representation of particular groups. Positive action refers to measures that Chambers may lawfully take under the sex discrimination and race relations legislation to meet special needs or to train or encourage people from a specific group that is under represented in particular work. Following the positive action programme, participants must then compete for any established posts on equal terms with all other applicants and all appointments must be on merit. This may be for example where there is ongoing and enduring under representation of women, or members of Black and minority ethnic communities or disabled people as barristers compared to their representatives in the wider applicant pool. In such circumstances the CPS expects Chambers through which it secures legal services to:

- actively consider and put in place positive action programmes where the evidence warrants such programmes
- explain the reasoning and benefits of positive action to all staff, members, pupils and potential applicants

- evaluate the impact of any positive action programme and cease the programme once the results have been achieved

(Para 2.25 of the Bar Council's Equality and Diversity Code sets out a definition of lawful positive action and distinguishes this from positive discrimination.)

There is no prohibition in the disability discrimination legislation against positive measures in favour of disabled people. It anticipates that such measures, including reasonable adjustments (see para. 3.8), will be taken. Chambers are expected to:

- encourage disabled people to apply to Chambers
- review their recruitment and marketing literature to include appropriate references to disability access
- identify Chambers' level of accessibility to disabled people
- offer mini-pupillages to appropriately qualified disabled students
- take other appropriate outreach steps.

These expectations are consistent with para 1.107 of the Bar Council's Equality and Diversity Code which sets out the position in relation to disability legislation.

## 3.5 Training on equality and diversity

The CPS expects Chambers through which it secures legal services to:

- ensure all members, staff and pupils receive basic training on equality and diversity which covers both legal obligations and good practice
- ensure equality and diversity training covers all equality strands including age, disability, faith or belief, ethnicity, gender and sexuality
- integrate equality and diversity issues into other training provided for chambers staff, members and pupils
- keep training under review and in line with current developments.

(Para 1.8 of the Bar Council's Equality and Diversity Code recommends a least one member of the selection committee is trained in fair selection methods.)

## 3.6 Familiarisation with and commitment to key CPS policies

The CPS expects Chambers through which it secures legal services to ensure that its members are:

- familiar with and competent in the application of CPS policies when prosecuting on behalf of CPS
- demonstrate a detailed familiarity with and commitment to the consistent implementation of CPS hate crime policies in the areas of domestic violence, homophobic crime, racist and religious crime and disability hate crime
- able to meet the needs of a diverse client base

## 3.7 Equal access to and fair allocation of work within Chambers

The CPS instructs members of Chambers on the basis of appropriate skills and experience. This means that CPS may instruct specialist prosecutors to prosecute particular crimes. Such instruction is on the basis of specialist skills and experience and merit, not on personal attribute. CPS recognises that Chambers Clerks play a crucial role in this process and expects that when work is allocated or returned to Clerks they will follow the same fair allocation procedure based on skills, experience and merit.

The CPS expects Chambers through which it secures legal services to:

- ensure equal access to the range of work available
- ensure a fair allocation of work within Chambers
- monitor pupils and junior tenant access to work by disability, ethnicity and gender
- monitor the allocation to barristers of all returns and unnamed work coming into Chambers by disability, ethnicity and gender
- address any significant differences in work access and work allocation
- reallocate any work on the basis of skills and experience ensuring no discrimination in work reallocation
- provide appropriate guidance for Clerks on the fair allocation of work including allocation of returns

(Para 1.46 of the Bar Council's Equality and Diversity Code refers to Chambers duties to brief their clerks in fair allocation of work and in monitoring work allocation. Paras 1.36 to 1.52 of the Bar Council's Equality and Diversity Code also refers to fair access to and fair allocation of work. Also para 404.2(b) of the Bar Council's Code of Conduct requires Heads of Chambers to ensure that the affairs of their Chambers are conducted in a manner which is fair and equitable for barristers and pupils.)

## 3.8 Reasonable adjustments to promote disability equality

There is a recognition that disability equality issues are both less well developed in this sector and require specific practical responses.

In this context the CPS expects Chambers through which it secures legal services to:

- take steps to raise the awareness of members and staff of their obligations under the disabilities legislation
- advertise their commitment to providing reasonable adjustments in relation to the recruitment of members, staff and pupils and the provision of legal services
- respond appropriately to requests for reasonable adjustments

(These expectations are consistent with paras 1.2 and 1.3 of the Bar Council's Equality and Diversity Code. Also relevant is Annex D to the Bar Council's Equality and Diversity Code guidance on reasonable adjustments in pupillage and tenancy recruitments.)

## 3.9 Maternity, paternity, parental leave and flexible working

The CPS expects Chambers through which it secures legal services to:

- have a written policy on maternity, paternity and parental leave which contains particulars of:
  - (a) the extent of period of leave offered free of rent and Chambers expenses;
  - (b) the member's right to return to Chambers after a specified period of leave.
- have a written policy permitting members of Chambers to take career breaks or work flexibly.

## 3.10 Handling of complaints

The CPS expects Chambers from which it procures legal services to:

- have a complaints policy including harassment which sets out standards for acceptable and unacceptable behaviour and procedures for dealing with complaints of such behaviour
- have a procedure for resolving complaints informally and promptly
- have a formal procedure for investigating and resolving complaints which become formalised
- have a clear policy statement which treats breaches of equality and diversity policies and procedures as a disciplinary issue

(This reflects Annexes E and F of the Bar Council's Equality and Diversity Code on harassment and on complaints and grievances.)

## 3.11 Reviewing and reporting achievements against the Expectations Statement

The CPS requires reporting by Chambers of progress against the Statement. The CPS will support this reporting by Chambers with its own review activity. The CPS operates a tiered progress reporting system to check progress in the implementation of this Statement. This tiered reporting system involves different frequencies of reporting based on the size of Chambers. The tiered reporting system involves:

- 1.** annual reporting for larger sets of Chambers (ie sets with 45 or more members and undertaking or seeking to undertake CPS work);
- 2.** biennial reporting for medium sets of Chambers (ie sets comprising 20 to 45 members and undertaking or seeking to undertake CPS work); and
- 3.** three yearly reporting for smaller sets of Chambers (ie sets comprising under 20 members and undertaking or seeking to undertake CPS work).

The progress reports will be produced in accordance with a standard CPS reporting format. The progress report will be expected to be a clear, concise and verifiable statement of the position and progress at a given point in the reporting cycle. The reports will be submitted to the Joint Advocate Selection Committee (JASC) for their circuit. The reports should be copied to the local CCP as well as to the Chair of the JASC and to the CPS Equality and Diversity Unit in CPS HQ. (This builds on existing practices where JASCs have been receiving analyses of ethnic and gender data from Chambers).

The JASC will review each Chambers report and decide whether it meets CPS expectations, or contains realistic plans to meet them. If the JASC view is that Chambers should do more to comply with CPS expectations, Chambers will be given the opportunity to improve their systems and processes. Ultimately, if Chambers cannot demonstrate that it meets CPS expectations, or has reasonable timetabled and realistic plans to meet them, the CPS must decide whether it wishes to continue to send work to that Chambers.

Before any decision is taken the Head of Chambers will be invited to discuss findings with the JASC Chair and Circuit Leader. The Head of Chambers will be given an opportunity to make representations or submit a reasonable timetabled plan to meet CPS expectations. Care will be taken to ensure that individual members of Chambers do not lose the opportunity to undertake CPS work because their Chambers fails to meet CPS expectations, without being given a reasonable period of time to make necessary improvements.

New applicants to the CPS lists will be asked to confirm that their Chambers has policies in place which meet CPS expectations, perhaps by reference to the last Chambers annual report to the JASC or that their Chambers have a timetabled and realistic plan to meet the CPS expectations.

In addition to the basic review and reporting arrangements set out above, the CPS Equality and Diversity Unit will through its team of regional Projects and Performance Advisors undertake a series of annual randomly selected but pre-announced monitoring visits and reviews of Chambers performance against this Expectations Statement. This will complement and support the assessment undertaken via the JASCs system set out above.

# Appendix

## Sources of additional information

1. The Bar Council, Code of Conduct
2. The Bar Council, Equality and Diversity Code for the Bar (Nov 2004)
3. Commission for Racial Equality, Guide on Race Equality and the Procurement of Public Services 2002-03.
4. Race Relations Act 1976
5. Disability Discrimination Act 1995
6. Sex Discrimination Act 1975

# Notes

# Notes