

## **FAIR ACCESS TO**

## **WORK POLICY**

### **Introduction**

1. The opportunities for barristers to develop a successful practice in their areas of interest are frequently affected by the range and quality of work on which they are instructed in the early stages of their careers and even in pupillage.
2. Pupils and members of Chambers should be afforded the opportunity to develop their practices in a fair and equal manner, free from any discriminatory or stereotyped career assumptions that may exist.
3. The purpose of this policy (the “**Policy**”) is to put in place effective procedures for:
  - a. The monitoring of work allocation amongst pupils and members of Chambers;
  - b. Ensuring the fair distribution of work, particularly unallocated cases, amongst pupils and members of Chambers;
  - c. Ensuring the fair distribution of opportunities to attract future assigned work (marketing); and
  - d. Responding to, and rectifying where appropriate, complaints and concerns about work allocation.
4. For the purposes of the Policy, an “unallocated case” is a potential instruction to act in a particular matter (whether as sole Counsel, as junior to a Silk, or otherwise) in respect of which the lay or professional client has not decided upon or named their choice of Counsel at the point in time when the potential instruction is first received by the clerks.

### **Regulatory Requirement**

5. rC110(3)(i) of the BSB Handbook requires that the affairs of chambers are conducted in a manner which is fair and equitable for all members of chambers, pupils and/or employees. This includes, but is not limited to, the fair distribution of work opportunities amongst pupils and members of chambers.

### **Monitoring of Work Allocation**

6. Chambers will ensure that its clerks use LEX software to (i) record relevant data regarding and (ii) monitor Chambers' internal distribution procedures and instructing solicitors' briefing practices. The clerks should be particularly aware of issues relating to the distribution of any unallocated cases coming into Chambers, and the distribution of work between members of Chambers and pupils and junior tenants. The distribution of such work, in particular, should be systematically recorded and monitored on LEX to ensure that any disparities in allocation are identified and rectified.
7. Three members of Chambers will be appointed as the 'Fair Access to Work Committee' ("**the Committee**"). They will be responsible for overseeing the monitoring of work and should meet with the Senior Clerks on a regular basis in order to compare and review the work distribution data to ensure that work is distributed in a manner which is fair. For these purposes, 'regularly' is at least once every six months. The Committee will report to the Board of Chambers as soon as reasonably practicable after their meeting with the Senior Clerks.
8. The Committee should use the work distribution data to ascertain whether any instructing organisations or solicitors exhibit briefing practices which tend to favour a particular group. If any such trend is identified, it will be reported to the Board of Chambers, which will consider whether there is any underlying discriminatory practice and (if so) what steps should be taken in order to remedy the situation.

### **Ensuring the Fair Distribution of Work**

9. Members of Chambers and clerks both play a role in the allocation of work since both may be asked by clients for their views as to who would be suited to a particular piece of work. Therefore, all members of Chambers and clerks should be briefed on the importance of fair allocation of work and (where appropriate) be encouraged to undertake equality and diversity training. It is a principle of fundamental importance that the clerks and any member of Chambers who is asked for a recommendation seek to ensure that, where possible, the allocation of work in Chambers is dealt with in a fair and equitable manner.

10. Where an inquiry is made to the clerks about an unallocated case, the following best practice should be adopted in all cases (unless, owing to the urgency of the case or for some other reason it is impracticable to do so):
- a. The clerks will seek as much information as possible in the circumstances about (i) the area of expertise or practice and (ii) the level of experience required for the work, this including, where appropriate, (iii) the level of any fee that the client is prepared to pay (these are collectively referred to hereafter as the “**scope of the inquiry**”). The clerks are encouraged, where they consider it appropriate, to test the boundaries of the scope of the inquiry by reference to these three criteria. This may be particularly appropriate where the clerks consider that the maker of the inquiry may be proposing arbitrary or unjustified criteria; for example, in some circumstances, an upper seniority limit. Where the criteria are discriminatory, this should be raised with the Committee and/or the Board in accordance with paragraph 20 below.
  - b. The clerks will then identify all members of Chambers and pupils falling within the scope of the inquiry (by reference to the criteria (i)-(iii) in paragraph 10(a) above) and check their availability. Members of Chambers and pupils who are not available or who do not fall within the scope of the inquiry, or are otherwise not considered by the clerks, in their discretion, to be suitable for the work will be excluded. All others who (i) are available for the work, (ii) fall within the scope of the inquiry and (iii) are considered by the clerks to be suitable for the work will be put forward for the inquiry.
  - c. Where, however, the clerks consider that putting forward all of the members and pupils identified under paragraph 10(b) above would be too great a number to assist the maker of the inquiry, the clerks may, in their discretion: (i) exclude some of those members and pupils; and (ii) instead put forward only those members and pupils that they consider to be best suited for the inquiry.
  - d. Where the above process has the result that no member of Chambers or pupil is identified as being available for the inquiry, the clerks will, in their discretion, put forward such other members of Chambers or pupils that they consider to be suitable for the inquiry, following consultation (where practicable) with each of those members of Chambers or pupils.

- e. When exercising any discretion under this paragraph, the clerks must have regard to (i) the purpose of this Policy in paragraph 3 above and (ii) the three criteria in paragraph 10(a) above; and must not take into account any criteria that is inconsistent with this Policy, such as sex or age.
11. Where a member of Chambers is in a position to propose another member of Chambers or a pupil either to replace them or to work with them on a case, that member must act fairly in their selection and/or recommendation to instructing entities. Acting fairly includes ascertaining from the clerks the names of all members who are available and appropriate for the work in question and refraining from making any selection between other members on grounds which give rise to unlawful discrimination.
12. Members of Chambers and pupils will be encouraged to mark their diaries to record the periods at which they are at capacity (a “**capacity period**”). The mark of a capacity period indicates that the member or pupil is not available and does not wish to be put forward for an unallocated case (or for any other work) for which the relevant work falls to be completed during the capacity period in question. The member or pupil may still be considered for unallocated cases (and any other work) which come into Chambers during a capacity period, but for which the relevant work falls to be completed after the capacity period in question.
13. The late delivery of papers can (because of external commitments such as childcare) affect those who might otherwise be eligible to accept instruction and/or a brief. All reasonable efforts should be made to ensure the timely delivery of papers and/or their provision electronically (if required or necessary) to the member or pupil instructed so as to widen the choice of members or pupils to be instructed.
14. Late delivery of briefs may also disadvantage disabled barristers who may require the court to make adjustments for them which cannot be made on the morning of a trial or hearing.
15. The fair allocation of work amongst pupils and members will be monitored in the manner described above. Chambers will have in place procedures for dealing effectively with complaints or concerns about allocation of work (see below).

### **Potentially Discriminatory Requests**

16. Section 47(6) of the Equality Act 2010 makes it unlawful for any person in instructing a barrister, to discriminate against them. This includes clients, clerks and solicitors. In addition, the SRA Code of Conduct 2011 prohibits solicitors from discriminating unlawfully against any person in the course of their professional dealings. Such dealings will include the instruction of barristers.
17. It is vital that all of the clerks are aware of the legal position set out above.
18. Clerks may receive requests that are discriminatory, for example requests from solicitors for a barrister of a particular sex or race for a particular piece of work where no justification for such exists. Faced with such requests, clerks should explain that they are unlawful. If possible they should try to explore the reasons for the request. It may be claimed in the course of the discussion that the request has originated with the client. This is not a justification. Further discussion between the clerk and the solicitor may help to clarify the reason for the request, which may be based on stereotypical assumptions and it may be possible to meet the underlying need in a non-discriminatory way.
19. The clerks should be particularly alert to requests which (on the face of it) appear not to be discriminatory but (in reality) may be. For example, an instructing solicitor may wish to request a recommendation for an 'aggressive' barrister, meaning a request for a male barrister only.
20. On no account should clerks comply with any request or requirement to discriminate on unlawful grounds in the choice of barristers. Should the solicitor refuse to modify or withdraw the request and continue to insist on a discriminatory allocation of work, the work should be politely refused, the clerk should make a full note of the incident immediately, and the matter should be reported to the Committee and/or the Board to consider whether to report the solicitor to his or her professional disciplinary body.

### **Ensuring the Fair Distribution of Opportunities for Future Assigned Work (Marketing)**

21. Marketing strategies for pupils and members of Chambers should take into account equal opportunities considerations. It is incumbent upon Chambers to ensure that marketing and networking activities, such as giving or attending seminars and lectures and social activities such as quiz nights and sporting activities, are organised so that all pupils and tenants can, so far as practicable, be equally involved. This extends to opportunities for pupils and junior

tenants to get to know more senior members of chambers and the clerks.

22. To this end Chambers' marketing and networking and marketing opportunities shall be publicised within Chambers and allocated fairly. This will usually be done by one of the clerks sending out an email inviting expressions of interest for a particular networking or marketing event.

### **Responding to, and Rectifying, Complaints**

23. It is hoped that, for so long as Chambers adheres to the guidelines above, there should be limited scope for complaints about the fair allocation of work (and opportunities for work).
24. To ensure transparency and openness, the clerks will be encouraged to discuss fair allocation of work (and opportunities for work) with, and provide relevant work distribution data to, members of Chambers at their individual practice development meetings. This should provide a relatively informal and effective forum for airing, and rectifying, any complaints about the fair allocation of work (and opportunities for work) in Chambers.
25. However, if a pupil or member of Chambers wishes to make a formal complaint about the fair allocation of work (and opportunities for work), then Chambers' Complaints and Grievance Procedure should be followed.

### **Adoption of this Policy**

26. This policy was adopted on the date below. Chambers' Equality and Diversity Officer is responsible for monitoring the effectiveness of this policy. It is intended that this policy, and its operation, should be reviewed regularly.

Approved by the Board, 10<sup>th</sup> October 2022

Reviewed by Chambers' Equality and Diversity Officer.