



Bar Council response to the Consultation on the sexual orientation and religion or belief monitoring within chambers and BSB entities

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Standards Board's consultation paper entitled '*Consultation on the sexual orientation and religion or belief monitoring within chambers and BSB entities*'.
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).
4. This Response has been prepared by the Equality, Diversity and Social Mobility (EDSM) Committee. It has been approved by the General Management Committee of the Bar Council, and should therefore be taken as the official response of the Bar Council to this consultation.

Introduction

5. The Bar Council is pleased that the BSB is considering amendments to reporting sexual orientation and religion or belief (BSB Handbook rule rC110.3(s)(i)). Over the last few years many chambers have expressed concern to us over the reporting requirements which, they believe, prevent chambers from demonstrating their commitment to all protected characteristics and their own diversity. We had

passed on these concerns to the BSB and are delighted to see this consultation as a response.

6. This consultation considers a change to current Rules, under which sexual orientation (SO) and religion or belief (RB) are treated differently to other diversity characteristics. The current rule provides an exception for SO and RB, in that it requires each member of Chambers' or entities' workforce to give their consent, before aggregated and anonymised SO and RB monitoring data can be published.

That rule can be seen in the BSB Handbook:

'The published summary of anonymised data shall

- (i) exclude diversity data relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the members of the workforce'*

Q1: Do you agree with the proposed change¹ to the diversity data monitoring rule above? Please explain your answer. (See also question 4 below)

7. The immediate advantage that removal of this rule would bring is in the question itself: that it would bring the regulation of SO and RB in line with the regulation relating to other diversity characteristics: gender, race, disability, age, socio-economic background and caring responsibilities.

8. Under Rule rC110.3(q) of the BSB Handbook it is already provided that the members of Chambers' workforce are offered the opportunity to provide diversity data in respect of themselves covering age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities. The proposed rule change in respect of SO and RB is only a small extension of this clear encouragement.

9. Key aims of the work of the Bar Council are to promote a diverse Bar, and to encourage transparency in practice at the Bar. The BSB is committed to promoting a diverse profession.

10. Bringing the way that SO and RB are dealt with in line with other diversity characteristics will help assess and analyse what should already be a fully-diverse workforce at the Bar.

¹ The proposal of the Bar Council is that Rule rC110(3)(s)(i) is removed and that Rule rC110(3)(s)(ii) remains in place.

11. It is likely that the proposed rule change sought by the Bar Council will increase levels of data publication by Chambers and entities, which should in turn contribute to improvements in transparency and disclosure rates. It is also likely to help Chambers attract, maintain and retain a truly diverse workforce.

12. To treat SO and RB information in a different way to other diversity characteristics would be to allow possible prejudices to foster. The argument that being identified as a Chambers with a high percentage of people who are LGBT+ or from a particular religious group may have security implications is a valid consideration for the Consultation Paper, but the real fear is one of prejudice against approaching such Chambers because of that Chambers' particular diversity characteristics. The same argument could have been advanced in respect of all other diversity characteristics. To treat SO and RB differently to the other diversity characteristics suggests that there is something to hide in respect of these particular diversity characteristics, which cannot be allowed to be the case. Change must come from the Bar down.

13. It is important to note that the proposed rule change still provides protection for the individual. If the rules in respect of SO and RB are changed, this would mean that Chambers and entities would be required to amend their diversity data policies to remove the restriction on the publication of SO and RB data. However, data under SO and RB would still only be published if there was no risk that individuals could be identified or if those who might be identified gave their consent.

Rule rC110.3(r) provides that:

'The Diversity Data Officer shall ensure that such data is anonymised and that an accurate and updated summary of it is published on Chambers or BSB entity's website every three years. If Chambers or the BSB entity does not have a website, the Diversity Data Officer shall make such data available to the public on request'.

Rule rC110.3(s)(ii) provides that the published summary of anonymised data shall...

'exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent',
thereby providing protection for the individual if necessary.

14. This protection would similarly apply to SO and RB, which it would if it remained in place and Rule rC110.3(s)(i) was removed.

Q2: Would the suggestions at paragraph 15 be appropriate and sufficient guidance for chambers and BSB entities? Please explain your answer.

15. The Bar Council suggests that the guidance suggested at paragraph 15 of the BSB Consultation paper would be appropriate and sufficient guidance for Chambers and BSB entities, although we are unclear as to the 'in exceptional circumstances' guidance, as we feel that the remaining heads of guidance provide appropriate and sufficient guidance. We consider that the 'risk of individuals being identified' is the only appropriate 'exceptional circumstance'.

Q3: Do you agree that there are potential benefits and challenges as described above? Are there any additional potential benefits or challenges to the proposed rule change? Please explain your answers.

16. The Bar Council agrees that there are benefits and potential challenges in the proposed rule change as set out in the BSB Consultation paper and considers that the benefits considerably outweigh the potential disadvantages. We cannot think of any further benefits and potential challenges to those listed.

17. It may be a 'nuisance' for Chambers to have to amend their Diversity Data Collection policies and to need to 're-run' part of their data collection processes to ensure that individuals are aware of the significance of giving or withholding consent, but these factors are significantly outweighed by the potential benefits (as set out) including those of: (a) Improved transparency about the profile of Chambers' workforces; (b) a consistent approach for monitoring across all diversity characteristics; Promoting increased disclosure rates for diversity data within Chambers and entities and across the profession. The Bar Council considers that it is vital that there is a consistent approach taken towards monitoring across all diversity characteristics.

18. The Bar Council considers that maintaining every individual's right to anonymity is the key protection underpinning the proposed rule change, and agrees that the right to object to publication should only arise where an individual's anonymity is at risk.

Q4: (a) Do you think that different considerations apply to the publication of, respectively, SO and RB data? (b) Should different approaches be taken to the publication of each set of data? (c) If so, how should the approach differ for each characteristic? Please explain your answers.

19. In response to Q4 (a), (b) & (c)...

- (a) We agree that different considerations apply to the publication of SO and RB data.
- (b) We consider that the same approach should, however, be taken to the publication of, respectively, SO and RB data.
- (c) We do not think that the approach taken should differ.

20. The reason we suggest this is to 'bring into line' both SO and RB with the other diversity characteristics. At present they stand as an exception, and where we started this response was to state that we can see no valid reason for these diversity characteristics being treated differently to the other diversity characteristics which have already been catered for. And catered successfully for.

21. What underpins the proposed rule change is the need to bring about a more diverse and more transparent Bar. We consider that the proposed rule change is a necessary step towards achieving that.

Bar Council
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