

The Barrister Group Fair Allocation of Work Policy

Introduction

The Barrister Group's approach to the allocation of work is conducted in a manner which is fair and equitable for all members of The Barrister Group and pupils. This includes, but is not limited to, the fair distribution of work opportunities among pupils and members of Chambers.

Where a specific barrister is not requested, we apply a fair allocation of unassigned work. We ensure fairness in presenting names of barristers and pupils to those instructing us as well as fairness in opportunities to attract future named work. These arrangements apply regardless of the source of the work.

A copy of this policy is provided to all those who work and engage with The Barrister Group and is available both on our website and the online The Barrister Group Operating Manual.

Procedure

This document sets out The Barrister Group's Policy in relation to:

- the process of allocation of unassigned work;
- the monitoring of unassigned work; and
- the monitoring of equality and diversity data against the allocation data.

Publication of this document and implementation of the Policy is subject to consultation and BSB review.

This policy is designed to ensure best practice in accordance with the BSB Equality Rules.

To this end the policy is kept under regular review and The Barrister Group welcomes and encourages the views of its members and staff and all regulatory guidance or advice.

Discrimination on grounds of race, sex, disability, pregnancy and maternity, sexual orientation, marital or civil partnership, gender re-assignment, religion or belief, or age, is unlawful and constitutes professional misconduct ("the protected characteristics").^[1]

The Core anti-discrimination duty is set out at CD8, supplemented by rC12, of the BSB Handbook.

Guidance in relation to work allocation equality monitoring is provided in the BSB Handbook Equality Rules and rC110 of the BSB Handbook.

Work is "**unassigned work**" if at the point of enquiry and/or at the point at which it is sent into The Barrister Group (whether in hard copy, electronically, by telephone, in person or by any other means) the person instructing does not state that it is to be assigned to a named member of The Barrister Group.

Work is “**bulk work**” if at the point of enquiry and/or at the point at which it is sent into The Barrister Group (whether in hard copy, electronically, by telephone, in person or by any other means) the person instructing does not state a wish to participate in the work allocation decision.

The term “**work**” includes advising in writing or in conference and providing representation at hearings.

Assigned work

This policy does not apply to assigned work. However, the duty not to discriminate applies to all aspects of the services provided by barristers including the acceptance of instructions, and instructions will not be accepted by The Barrister Group on behalf of any barrister if they are discriminatory of any of the protected characteristics.

Allocation of unassigned bulk work

The Barrister Group uses a two-stage process to allocate unassigned bulk work to barristers. The first stage is computerised. The second stage involves decision-making by the clerks.

Stage 1

The Barrister Group’s diary and case management software (Chambers 365) short-lists those of its members who are available. It does so by reference to their online diary (in the case of hearings) and account settings/preferences. All The Barrister Group barristers are required to keep their diaries and preferences up to date to ensure accuracy of information. Preferences include (i) areas of law; (ii) level of experience; (iii) courts (to which the barrister is willing to travel subject to the fee); and (iv) the minimum applicable fee. Barristers are thus excluded from a short-list only by the account preferences which they themselves have set.

The short-list of barristers is then placed in order of preference by a computer algorithm (“**algorithm**”) which takes some or all of the following factors into account: (i) earnings; (ii) quantity of work; (iii) sources of work; and (iv) geographical location. Of these factors, geographical location is included on the basis that it is preferable to use local counsel wherever appropriate, but its weighting is considered of less importance than other factors. In the case of paperwork, the algorithm will consider the locality of the instructing party as well as the locality of the court.

To take two examples: in the first example, where there are 5 short-listed barristers all in receipt of broadly comparable earnings and/or quantity or sources of work, the barrister with the closest geographical location is likely to be placed by the algorithm at the top of the list. In the second example, where there are 2 short-listed barristers for a case in Truro, barrister A located in Cornwall and barrister B in Norfolk, but where barrister A has higher earnings and/or quantity of work than barrister B, barrister B is likely to be placed by the algorithm at the top of the list notwithstanding the proximity of barrister A to the court. This outcome is

consistent with barrister B's wish to be considered for work in Truro according to account preferences.

None of the factors thus considered by the computer are discriminatory of the protected characteristics. This stage of the process actually produces the positive effect of promoting equality of income.

Stage 2

The computer algorithm does not make the final decision for allocation. The final decision lies with the clerks. The order of preference is however required to be considered by the clerks and will be adopted unless there is a good reason not to do so.

The Barrister Group ensures that all of the clerks involved in this stage of the process have undertaken training in Equality, Diversity and Inclusion. Good reasons not to do so in relation to bulk work are: (i) reasons of efficiency and greater opportunity – for example, it may be more productive to place a case with a barrister who is already booked to attend the same court in order to keep another barrister free to take other work elsewhere; and (ii) concerns about the level of experience, suitability or ability of the barrister to perform the work to the required standard within the allotted time. If there is a good reason not to apply the algorithm, the reason is required to be recorded.

Allocation of unassigned non-bulk work

The processes described above in relation to the allocation of unassigned bulk work also apply to the allocation of unassigned non-bulk work, save that in this case the clerks may include in the short-list any barrister who is suitable according to their account settings/preferences and can be made available by re-arrangement of their diary.

The short-list is then provided to the instructing party together with a range of options relating to level of fees, experience, and availability. If the instructing party expresses a preference, the case is assigned to the selected barrister. If the solicitor does not express a preference, the clerks will apply the algorithm unless there is a good reason otherwise. If there is a good reason not to apply the algorithm, the reason is required to be recorded.

In cases where the instructing party requests a short-list of possible barristers, the clerks will provide the short-list generated by the algorithm unless there is a good reason not to do so. If there is a good reason not to apply the algorithm, the reason is required to be recorded.

Unassigned work monitoring

The Barrister Group's policy is to monitor its data to ensure that work is being allocated fairly within chambers including to pupils, junior tenants and those returning from parental leave.

Where the algorithm is correctly applied, there can self-evidently be no discriminatory allocation because all the factors considered by the algorithm are non-discriminatory of the protected characteristics.

It follows that monitoring is particularly required where there has been a decision to override the algorithm. This is the only aspect of the decision-making where discrimination (or the perception of discrimination) might arise.

The relevant allocation data for the purposes of monitoring is thus: (i) the names of those barristers on the short-list; (ii) the name of the barrister to whom the work was allocated; (iii) the reason why the barrister was selected – this may be because they were the only person available, because of their geographical location, because of their level of experience, because they were chosen by the instructing party from a short-list, or for some other reason; (iv) the identification of the member of staff making the allocation; (v) identification of those cases where a decision was taken to override the algorithm; and (vi) in those cases where a decision was taken to override the algorithm, the reason or reasons why the algorithm was overridden.

Review of allocation data and equality information

Chambers 365 software can compare allocation data and equality information to identify the reasons for any disparity in the allocation of unassigned work.

The patterns which are to be considered and against which disparity is to be measured are: earnings, quantity of work and sources of work. Disparity is measured against unassigned work only.

The anonymised data relating to the allocation of unassigned work is to be made available in real time within the The Barrister Group Intranet to staff and barristers only in a modified form of Appendix A (to be entitled “**Fair Allocation of Work Data**” or equivalent) recording the number and value of cases by percentage and comparing the allocation data with the equality and diversity data.

The Senior Clerk and the Equality and Diversity Officer will regularly review (at least annually) the data set out in the Fair Allocation of Work Data form and identify any patterns indicating a concern relating to the allocation of unassigned work by any member of staff.

Monitoring of preferences

Since barristers are required to set their own account preferences, the Senior Clerk and the Diversity Officer will, as part of their regular review of the data, compare the account preferences with the equality data and consider whether there is any disparity between barristers of the same call and/or experience in relation to minimum fee rates.

Managing concerns

Where any pattern indicating a concern is identified, the concern will be addressed by the Senior Clerk and the Equality and Diversity Officer with the member or members of staff concerned.



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In any case where a disparity in minimum fee rates is identified, the Senior Clerk will inform those barristers who may be affected and conduct a review with them or invite them to review their preferences accordingly, the outcome of which will be recorded with reasons. The Senior Clerk and the Equality and Diversity Officer will report quarterly to the Board of The Barrister Group and the Head of Chambers as to whether any concerns or disparities have been identified and what actions have been taken and recommendations made. If the issue cannot be resolved by the Senior clerk and the Equality and Diversity Officer, it will be referred to and dealt with by the Board of The Barrister Group and/or the Head of Chambers as appropriate.

Concerns of barristers

If a barrister has reason to raise a concern relating to the fair allocation of work or this Policy which does not relate to the Senior Clerk, they are required to raise it with the Senior Clerk. Where such a concern is raised, the Senior Clerk and the Equality and Diversity Officer will examine the data to see whether there is any pattern of concern. Where any pattern indicating a concern is identified, the concern will be addressed by the Senior Clerk and the Equality and Diversity Officer with the member or members of staff concerned.

If a barrister has reason to raise a concern relating to the fair allocation of work or this Policy which relates to the Senior Clerk, they are required to raise it with the Head of Chambers. Where such a concern is raised, the Head of Chambers and the Equality and Diversity Officer will examine the equality data to see whether there is any pattern of concern. Where any pattern indicating a concern is identified, the concern will be addressed by the Head of Chambers and the Equality and Diversity Officer with the Senior Clerk.

In any case where a barrister raises a concern relating to the allocation of work or this Policy, the concern will be addressed by the appropriate persons and a written response provided as soon as practicable but in any event within 28 days of the date of the raising of the concern.