



Legal Services Board decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Bar Standards Board application for approval of Equality and Diversity Provisions 2012

The Legal Services Board (LSB) has approved the Bar Standard Board's (BSB) amendments to its Code of Conduct to introduce new equality and diversity provisions into its regulatory arrangements (Annex A); and the BSB's Guidance on Diversity Data Collection Rules (Annex B). This application was received by the LSB on 26 April 2012.

This decision notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The BSB is an approved regulator.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. Most notably, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² Rules for Rule Change Applications – Version 2 (November 2010)

Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this Decision Notice.

Decision

5. The BSB's proposed alterations to its Code of Conduct arise from both the Equality Act 2010 and guidance issued in July 2011 by the LSB under section 162 of the Act (the "LSB's Statutory Guidance"). The LSB's Statutory Guidance sets out the expectations of approved regulators relating to the collection and publication of diversity data at the level of individual firms and chambers. The proposed changes are to establish rules in regulatory arrangements since the BSB concluded that compliance could not be achieved through guidance alone. The LSB supports the policy objectives of these changes.
6. The principal rule changes will require chambers to:
 - Have an Equality and Diversity Policy accompanied by a written implementation plan
 - Appoint an Equality and Diversity Officer (EDO)
 - Appoint a Data Diversity Officer (DDO)
 - Ensure that from 2013, the member with lead responsibility for chambers' selection panels are trained in fair recruitment
 - Use fair and objective selection criteria
 - Gather and review numbers and percentage of staff, barristers, pupils and assessed mini-pupils (broken down by race, gender and disability) in relation to:
 - Applications for assessed mini-pupillages, pupillages, employed roles, and membership of chambers; and
 - Allocation of unassigned work
 - Ensure the fair distribution of work amongst pupils and members of chambers
 - Have a written anti-harassment policy
 - Have a parent and adoption leave policy
 - Offer members 6 months' free of chambers rent for parental and adoptive leave where rent is paid on a flat rate basis
 - Have a flexible working policy and
 - Have a reasonable adjustments policy
7. The Data Collection Guidance also submitted makes specific mandatory requirements in respect of the implementation of the rules and the role and responsibility of the DDO. It also specifies particular requirements to do with the collection of diversity data. Because the Data Collection Guidance contains

mandatory elements, it forms part of the BSB's regulatory arrangements and consequently also requires LSB approval under Schedule 4, Part 3 of the Act.

8. As a result of the LSB's initial assessment of the application the BSB made several changes to the proposed rules and proposed Data Collection Guidance. Most of these were minor and related to drafting issues in order to clarify arrangements and to ensure consistency within the rules and between the rules and guidance. The LSB welcomed the BSB's willingness to carefully consider those issues and to make changes.
9. There was one significant change of note in respect of the Data Collection Guidance. The LSB asked that the BSB reconsider its position in respect of the sample consent form included in the Data Collection Guidance. In the version submitted with the application, this sample consent form advised that where there are fewer than 10 individuals in any publishable category, the data for that category would not be published unless separate consent was provided at a later point. While the LSB does not seek to question the BSB's legal advice regarding publication of data, the LSB was of the view that this would have created an additional and unnecessary layer of administration which might carry a risk that many chambers would not publish data.
10. The BSB has subsequently re-considered the consent issue and amended the guidance sample form so that consent to publication will now be requested from the outset. However, while the LSB welcomes this change and considers that it will lessen the risk that chambers will not publish information, it still considers that there is some risk of non-reporting in Chambers of less than 10 or if there is less than 10 in one category. This is reflected in the LSB's formal assessment of the BSB's action plan submitted in response to the LSB's Statutory Guidance. The LSB expects the BSB to monitor the impact of the Data Collection Guidance on the publication of data by chambers. The LSB will consider this when it assesses and reviews approved regulators' progress in 2013.
11. There was one noteworthy issue where the BSB did not consider that a change was necessary. This was in relation to the timescale being given to having trained members of chambers selection panels. The rules states that every member of all selection panels involved in the recruitment of members, pupils, clerks and assessed mini-pupils must be trained in fair recruitment and selection processes from 1 July 2014. The LSB considers that this timescale is too long and would ask that the BSB encourages chambers to ensure that they have trained members of panels well before that date.
12. In relation to monitoring, the LSB expects the BSB to review implementation of the rules and the supporting Data Collection Guidance. The LSB welcomes the BSB's intention to consult in September 2012 on the supervision and enforcement framework in relation to the equality and diversity rules. The LSB reminds the BSB of what was said in its letter to the BSB of 30 May 2012 covering the LSB's Diversity Plan Assessment, that it recognises that the delivery of the objectives in the LSB's

Statutory Guidance is an ongoing process and it will continue to monitor progress throughout the rest of this year.

13. Having considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, the LSB considers that there is no reason to refuse this application; accordingly, the LSB grants this application.

14. The Annex to this decision notice contains the new equality and diversity provisions and the BSB's Guidance on Diversity Data Collection Rules.

Chronology

- The LSB confirmed receipt of this application on 26 April 2012.
- The 28 day initial decision period for considering the application ended on 23 May 2012.
- On 23 May 2012, the LSB issued an extension notice to the BSB extending the period in which the LSB would consider the application to 24 July 2012.
- This decision notice is being published on the LSB's website on 28 June 2012.

Action

The BSB to monitor the impact of the Collection of Data Guidance on the publication of data by chambers and to report back to the LSB on this aspect when we assess and review approved regulators' progress in 2013.

Chris Kenny, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

Annex A



New E&D Rules of the Code of Conduct

305.1. A barrister must not, in his professional practice, discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief or pregnancy and maternity.

408 A self-employed barrister must take reasonable steps:

408.1 to ensure that in relation to their chambers:

- (a) there is in force a written statement of policy on equality and diversity; and
- (b) there is in force a written plan implementing that policy.

408.2 to ensure that their chambers complies with the following requirements:

Equality and Diversity Officer

- (a) Their chambers must have at least one Equality and Diversity Officer.

Training

- (b) From 1 January 2013, the member with lead responsibility for any committee or panel responsible for the selection of members of chambers, pupils, clerks or assessed mini-pupils and at least one member of the selection panel, who may be the same person, must have received recent and appropriate training in fair recruitment and selection processes, except in unforeseen and exceptional circumstances.
- (c) From 1 July 2014, save in exceptional circumstances, every member of all selection panels involved in the recruitment of members, pupils, clerks and

assessed mini-pupils must be trained in fair recruitment and selection processes.

Fair and Objective Criteria

- (d) Their chambers' recruitment and selection processes must use objective and fair criteria.

Equality monitoring

- (e) Their chambers must regularly review:
 - (i) the number and percentages of staff, barristers, pupils and assessed mini-pupils from different groups;
 - (ii) applications for assessed mini-pupillage, pupillage, staff and membership of chambers;
 - (iii) the allocation of unassigned work.

This review must include:

- (i) collecting and analysing data broken down by race, disability and gender;
- (ii) investigating the reasons for any disparities in that data; and
- (iii) taking appropriate remedial action.

Fair Access to work

- (f) The affairs of their chambers must be conducted in a manner which is fair and equitable for all members of chambers and pupils. This includes, but is not limited to, the fair distribution of work amongst pupils and members of chambers.

Harassment

- (g) Their chambers must have a written anti-harassment policy which must:
 - (i) state that harassment will not be tolerated or condoned and that employees, members of chambers, pupils and others temporarily in chambers such as mini-pupils have a right to complain if it occurs;
 - (ii) set out how the policy will be communicated;
 - (iii) set out the procedure for dealing with complaints of harassment.

Parental leave

- (h) Their chambers must have a parental and adoption leave policy which covers:
 - (i) The right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave;

- (ii) The extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave. This includes, but is not limited to, the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave;
- (iii) The procedure for dealing with grievances under the policy;
- (iv) Chambers' commitment to review regularly the effectiveness of the policy.

Rent

- (i) Where rent is paid on a flat rate basis, their chambers must offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers' rent.

Flexible Working

- (j) Their chambers must have a flexible working policy which covers the right of a member of chambers to take a career break, to work part time, to work flexible hours or to work from home to enable them to manage their family responsibilities or disability and remain in practice.

Reasonable Adjustments Policy

- (k) Their chambers must have a reasonable adjustments policy aimed at supporting disabled clients, barristers and visitors to chambers.

Appointment of Diversity Data Officer

- (l) Their chambers must have a Diversity Data Officer (DDO).
- (m) Their chambers must provide the name and contact details of the DDO to the Bar Standards Board (BSB) and must notify the BSB of any change to the identity of the DDO, as soon as reasonably practicable.

Responsibilities of Diversity Data Officer

- (n) The DDO shall comply with the requirements in relation to the collection, processing and publication of Diversity Data set out in the paragraphs (o) to (t) below.

Collection and Publication of Diversity Data

- (o) The DDO shall invite the Members of the Workforce to provide Diversity Data in respect of themselves to the DDO using the model questionnaire at Annex C of the BSB Guidance on these rules.
- (p) The DDO shall ensure that such data is anonymised and that an accurate and updated summary of it is published on chambers' website in the first instance by 31st December 2012 and thereafter every three years. If the chambers

does not have a website, the DDO shall make such data available to the public on request.

- (q) 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; and
 - (ii) exclude Diversity Data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent; and
 - (iii) subject to the foregoing, include anonymised data in relation to each characteristic, categorised by reference to the job title and seniority of the Members of the Workforce.
 - (r) The DDO shall:
 - (i) ensure that chambers has in place a written policy statement on the collection, publication, retention and destruction of Diversity Data which shall include an explanation that the provision of Diversity Data is voluntary;
 - (ii) notify the Members of the Workforce of the contents of the written policy statement; and
 - (iii) obtain explicit consent from individual Members of the Workforce to the provision and processing of their Diversity Data in accordance with the written policy statement and these rules, in advance of collecting their Diversity Data.
 - (s) The DDO shall have effective systems and controls in place to ensure that any Diversity Data provided to the DDO is collected and held securely and in accordance with the Data Protection Act 1998.
 - (t) The DDO shall take all reasonable steps to ensure that the Diversity Data is not shared with any third parties except as permitted under these rules.
- 409 For the purposes of rule 408, the steps which it is reasonable for a barrister to take will depend on all the circumstances, which include, but are not limited to:
- (a) the arrangements in place in their chambers for the management of chambers; and
 - (b) any role which they play in those arrangements.

Definitions

This section contains the definition of terms used in the equality provisions.

1001. In this Code except where otherwise indicated:

“allocation of unassigned work” for the purposes of rule 408.2(e), includes, but is not limited to work allocated to:

- Pupils;
- Barristers of fewer than four years’ standing; and
- Barristers returning from parental leave.

“diversity data” means information relating to the following characteristics in respect of an individual:

- Age;
- Gender;
- Disability;
- Ethnic group;
- Religion or belief;
- Sexual orientation;
- Socio-economic background; and
- Caring responsibilities.

“family responsibilities”, for the purposes of rule 408.2(j), includes caring responsibilities for older, young, or disabled dependants or relatives;

“harassment” means any form of unwanted conduct in relation to a relevant protected characteristic which has the effect or purpose of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. A single incident may constitute harassment if it is sufficiently serious. The motive or intention of the perpetrator may be (but is not invariably) relevant.

“investigating” for the purposes of rule 408.2(e) means considering the reasons for disparities in data such as:

- Under- or over-representation of particular groups, e.g. men, women, different ethnic groups or disabled people;
- Absence of particular groups, e.g. men, women, different ethnic groups or disabled people;
- Success rates of particular groups;
- Over- or under-allocation of unassigned work to particular groups.

“members of the workforce” in respect of a chambers will include barristers, pupils, clerks and staff;

“parental leave” means leave taken by the main carer of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex;

“regular review” for the purposes of rule 408.2 (e) means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that “regularly” should mean annually. In respect of tenants, due to the static nature of the numbers, it is likely to be considered reasonable that “regularly” should mean every three years;

“remedial action” for the purposes of rule 408.2 (e) means any action aimed at removing or reducing the disadvantage experienced by particular groups;

“selection panel” for the purposes of rule 408.2 (b) and (c) means any panel formally tasked with the final decision on recruitment or selection of pupils, clerks, mini-pupils or tenants;

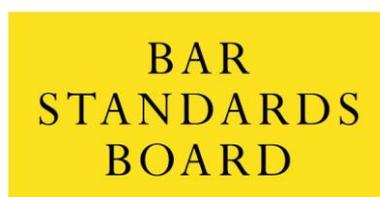
“training” for the purposes of rule 408.2 (b) and (c) means any course of study covering all the following areas:

- Fair and effective selection & unconscious bias;
- Selection criteria and assessment methods;
- Attraction and advertising;
- Application processes;
- Shortlisting skills;
- Interviewing skills;
- Assessment and making a selection decision;
- Monitoring and evaluation.

Training may be undertaken in any of the following ways:

- Classroom sessions;
- Online sessions;
- Private study of relevant materials such as the Bar Council Fair Recruitment Guide for the Bar;
- Completion of CPD covering fair recruitment and selection processes.

Annex B



REGULATING BARRISTERS

Guidance on the Bar Standard Board's Diversity Data Collection Rules

- 1.1 Equality policies by themselves will not bring about equality. Chambers should ensure that systems are in place that allow checks to be made on whether or not policies and action plans are being implemented and whether or not they are working. Without data, it is impossible to establish the nature or extent of any inequality and therefore devise appropriate measures to reduce or remove it.
- 1.2 It is for these reasons that the BSB has introduced new rules for the profession on the gathering and publication of equality data. The BSB expects compliance with its rules and strongly encourages individual members to provide their diversity data. It should be noted that there is a presumption of publication unless there exist good reasons not to publish. The guidance that follows provides clarity as to where caution should be exercised in order that data protection rules are not infringed.
- 1.3 **Key points**
 - Chambers must ensure that there is a Diversity Data Officer (DDO).
 - The identity of chambers' DDO should be provided to the Bar Standards Board (BSB).
 - Collection of diversity data in relation to these rules will assist chambers in meeting the diversity data analysis rules set out at 408.1 of the Code of Conduct.

Chambers DDO must ensure that:

- Diversity data covering age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities, is collected from members of chambers' workforce.
- Anonymised summary data is published on chambers website by 31st December 2012 in the first instance and every three years thereafter.

- Data is broken down by seniority and job title: for example in categories representing Queen’s Counsel, juniors, pupils, directors and general managers, senior clerks, junior clerks, and other administrative staff.
- There is a written Diversity Data policy in place which sets out when and how data will be collected. *A sample policy may be found at Annex A.*
- There is explicit consent to the collection and processing of diversity data before collection commences. *A sample notification and consent form may be found at Annex B.*
- The data is collected and processed securely and in accordance with the provisions of the Data Protection Act 1998.
- Individuals are informed that they may withdraw their consent to the processing, collection or publication of some or all of their diversity data at any time.

1.4 **Be Aware!**

- Chambers should aim to publish diversity data gathered unless:
 - The number of individuals in chambers workforce is fewer than 10 (ten), save in cases where there is consent from all members of chambers’ workforce.
 - The number of individuals identified with any characteristic within any category is fewer than 10 (ten), save in cases where there is consent from all those to whom the data in question relates.
 - The data relates to the characteristics of sexual orientation or religion and belief data, save in cases where there is consent from all members of chambers’ workforce.
- **In cases where there is full consent from those affected chambers are strongly encouraged to publish the data gathered.**

1.5 For the avoidance of doubt, these requirements apply only to self-employed barristers, however employed barristers may be subject to similar requirements imposed by their employer or another regulator. This guidance is primarily intended for self-employed barristers, Diversity Data Officers and chambers, but may be useful to members of the public.

1.6 This guidance is not exhaustive and will be reviewed from time to time in the light of the progress of the Diversity Data collection process and any relevant changes in the law.

2. **Diversity Data**

2.1 The Bar Standards Board is required, under the Legal Services Act 2007, to encourage an independent, strong, diverse and effective legal profession. Section 149 of the Equality Act 2010 (“the 2010 Act”) applies to the Bar Standards Board. It requires all public authorities, and bodies which exercise public functions, to have due regard to three needs in the exercise of all of their functions. They are the need:

- a. to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the 2010 Act;
 - b. to advance equality of opportunity between persons who share a relevant protected characteristic, and persons who do not share it; and
 - c. to foster good relations between persons who share a relevant protected characteristic and those who do not share it.
- 2.2 One of the ways in which the Bar Standards Board demonstrates and achieves these aims is by establishing rules on the collection and publication of Diversity Data (in anonymous form) at the level of individual chambers, and by extracting and aggregating diversity data from the “Barrister Connect” register for publication at a national level in order to give an aggregate view of the diversity make up of the profession.
- 2.3 The Legal Services Board consulted on *Increasing diversity in the workforce* in 2011 and as a result of that consultation published statutory guidance on the approach it expects from approved regulators, including the Bar Standards Board. In summary, the statutory guidance recommends that the approved regulators should require those whom they regulate to collect and publish diversity data on the whole of their workforce at the level of the firm or chambers, using a model questionnaire produced by the LSB. The full report on the Consultation and the statutory guidance and questionnaire are available on the LSB’s website.³
- 2.4 The Bar Standards Boards’ rules in respect of Diversity data are designed to implement this statutory guidance in a way that is proportionate and sensitive to the issues surrounding diversity data collection in small workplaces, as chambers typically are.
- 2.5 It is important to emphasise that provision by individuals of their diversity data remains entirely voluntary, that the data may be collected on an anonymous basis identified only by job title and seniority, that publication of summary data is not required in respect of sexual orientation, religion or belief, and nor is publication required where there is a real risk this would lead to identification of individuals unless consent is given. These provide important safeguards.
- 2.6 However, to the extent that individuals, recognising that the purpose of collection is to promote progress in equality and diversity, do agree to provide this data, collection and publication of the data at the level of individual chambers can help build a useful picture of

³ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm

the developing diversity profile of those chambers and of the workforce across the Bar as a whole.

- 2.7 The Bar Standards Board is therefore requiring chambers to give all individuals in the workforce (i.e. barristers and non-barristers who work within chambers) the opportunity through a model questionnaire to self-classify against the diversity characteristics set out above. The model questionnaire, which can be downloaded from the BSB's website, is based on the LSB's model. Using the questions in the LSB's model will ensure that results can be compared, not only as between different chambers but also with other parts of the legal profession, since other approved regulators will be likely to use that model. For this reason, you are asked either a) to use the model questionnaire supplied; or b) to base any questionnaire of your own on the same questions as are used in the model questionnaire.

3. Data Protection responsibilities

- 3.1 Data protection responsibilities are included within this guidance for the purpose of assisting barristers in understanding the relevant data protection legislation.
- 3.2 The Data Protection Act 1998 regulates organisations or individuals that collect and use personal data. These organisations or individuals, known as data controllers, must ensure that their registration with the Information Commissioner's Office is up-to-date and includes the collection and use of Diversity Data. It is the data controller that is ultimately held responsible by the Information Commissioner for the collection and use of personal data. Whilst individual barristers will be the responsible data controller in respect of personal client data processed on their own behalf, there will be a named data controller (for example the Senior Clerk or Head of Chambers) in respect of data processed on behalf of and for the benefit of the barristers as a group. This will include the collection and use of Diversity Data under these rules and guidance.

4. The Diversity Data Officer

- 4.1 Each chambers is required to appoint a chambers' Diversity Data Officer. The Diversity Data Officer is responsible for implementing the rules relating to the collection and processing of Diversity Data, and for demonstrating compliance by providing the Bar Standards Board with any documents or information reasonably requested for that purpose. The identity of the Diversity Data Officer must be notified to the Bar Standards Board as soon as reasonably practicable following their appointment, or any change in their identity.

- 4.2 The individual appointed to be the Diversity Data Officer may, but need not be, the person appointed as Equality and Diversity Officer in accordance with rule 408.2(a) of the Code.
- 4.3 In addition, the Diversity Data Officer may, but need not be, the same individual as the data controller. In some cases, it may make sense for one individual to perform both roles. However, the roles are distinct: The data controller has specific statutory responsibilities under the Data Protection Act with respect to personal data whereas the Diversity Data Officer is responsible to the Bar Standards Board for compliance with the rules relating to the collection and processing of Diversity Data. The Diversity Data Officer need not be a barrister.

5. Production of policy for the collection and use of Diversity Data

- 5.1 The Diversity Data Officer is responsible for producing a written policy on the collection and use of Diversity Data. The written policy shall include details of when and how the data will be collected. Initial data collection must be completed in time to allow publication of anonymised summary data by the date prescribed by the Bar Standards Board, namely by 31st December 2012. Thereafter, data will need to be collected sufficiently frequently to allow chambers to comply with the obligation to update the published summary at least every three years. In addition, the policy should, as a minimum, address the following:
- a. The names of the registered data controller and the Diversity Data Officer;
 - b. An explanation that the provision of Diversity Data is voluntary and the right of individuals to withdraw their consent to the use of their data at any time;
 - c. How the data will be collected and the purposes for which it is being collected;
 - d. That the anonymised data will be published online in summary form or made available to the public on request by the chambers, except for data on sexual orientation and religion or belief, or where there are reasonable grounds to believe that publication of the anonymous data would result in the identification of an individual in connection with one or more of the diversity characteristics;
 - e. How the data will be held, and the security measures in place to protect the identity of individuals in connection with the diversity characteristics;
 - f. How the data will be anonymised;
 - g. When and how the anonymised data will be published; and
 - h. How and when the Diversity Data will be deleted/destroyed.

- 5.2 A sample Diversity Data Policy is included in Annex A to this guidance. Please note that use of this policy does not guarantee compliance by chambers with their legal and regulatory requirements, for which they remain fully responsible. Chambers' should review and amend the sample Diversity Data Policy to ensure that it is suitable, having regard to their individual circumstances.

6. Collection of Diversity Data

- 6.1 In order lawfully to collect Diversity Data from individuals, chambers must obtain the explicit consent of individuals to the collection and processing of their data before collecting such Diversity Data. This is required because of the rules under the Data Protection Act concerning the processing of sensitive personal data (which includes information on health, ethnicity, religion or belief and sexual orientation). All Diversity Data, of whatever nature, should be treated as if it were sensitive personal data for the purposes of compliance with the Code.
- 6.2 To demonstrate that explicit consent has been obtained, it is necessary that chambers can show that individuals are prominently informed about how their personal data will be used and that the provision of their personal data is voluntary. Likewise, individuals should be told that by providing their Diversity Data they are explicitly consenting to the collection and use of their personal data for the purposes for which they are notified. To this effect, they must be provided with a copy of the written Diversity Data policy when they are invited to provide their Diversity Data.
- 6.3 Chambers must ensure that consent to the collection and use of the Diversity Data is freely given, and it is the responsibility of all Heads of Chambers and Diversity Data Officers to ensure that it is made clear to all individuals from whom Diversity Data is requested, that there is no obligation to respond and that the provision of Diversity Data is entirely voluntary.
- 6.4 In particular, chambers must therefore ensure that there are no internal procedures or behaviours which could reasonably be considered to compel individuals to provide their Diversity Data. For instance, the provision of Diversity Data should be obtained through a separate mechanism from any other collection of information from members of the workforce. This should mean that a separate form or questionnaire and separate notification is used. The request for Diversity Data should be made in isolation from any other requests for information and, in particular, should in no way be linked or associated with any appraisal or performance review of barristers/members of staff.

- 6.5 The questionnaire provided to individuals must clearly state that the provision of Diversity Data is voluntary. To this effect, each question must include the option for the individual to indicate that they would 'prefer not to say' if they do not wish to answer.
- 6.6 In order to highlight the provision of consent, when collecting Diversity Data electronically chambers should consider requiring an individual to tick a box on the first page of the online process which operates as an indication that the individual recognises that, by continuing with the questionnaire, they are consenting to the use of their Diversity Data for the purposes described. On the page where the tick box is provided, there must be a clear and comprehensive explanation of the purposes for which the data will be used and the consent wording should make reference to this. Failure to tick the box and thus not provide consent should stop the individual continuing with the online process and prevent them from completing the Diversity Data questionnaire. Individuals should be able to retain a copy of the notification and consent wording, for example through a print out of the electronic form.
- 6.7 If collecting Diversity Data electronically, chambers may wish to use online tools such as Survey Monkey (www.surveymonkey.com) to collect Diversity Data through an online questionnaire. However, these may not be appropriate for all chambers and do not guarantee compliance by chambers with their legal and regulatory requirements, for which they remain fully responsible. Chambers should carry out their own checks before using such online tools to ensure that they are suitable, having regard to their individual circumstances.
- 6.8 If collecting Diversity Data manually, in hard copy, chambers should use separate documents for the notification and consent form and the questionnaire itself. The notification and consent form should include a tick box which the individual must tick in order for the responses collected through the questionnaire to be valid. The notification must clearly state that the individual must tick the box in order for their consent to be given for the collection and use of their Diversity Data. Moreover, they must be informed that if the box is not ticked, then their responses are invalid.
- If the box is not ticked, the questionnaire (if completed) must be promptly deleted/destroyed in a secure manner. Individuals should be able to retain a copy of the notification and consent wording.
- 6.9 The Bar Standards Board has produced a sample notification and consent form which is included in Annex B to this guidance. However, use of the sample forms does not guarantee compliance by chambers with their legal and regulatory requirements, for which they remain

fully responsible. Chambers' should review and amend the sample forms to ensure that they are suitable, having regard to their individual circumstances.

- 6.10 All members of the workforce must also be informed if the Diversity Data Officer considers that there is a risk that publication of the anonymised data could lead to identification of diversity characteristics in connection with an individual, in order that consent to publication is given in the knowledge of that risk. This risk may be evident at the time the data is collected, or thereafter, but must be notified to members of the workforce prior to publication in order that consent is provided or declined to publication accordingly.

7. Security of Diversity Data

- 7.1 The chambers must implement appropriate systems and measures to protect Diversity Data against unauthorised or unlawful access and use of the Diversity Data, and against accidental loss or destruction of, or damage to, the Diversity Data.
- 7.2 In ensuring Diversity Data (whether containing personal data or anonymised) is kept securely, the chambers should, as a minimum:
- a. Take physical measures to protect hard copies from unauthorised access or damage including, for example, keeping the data in a secure locked drawer or box;
 - b. Have access controls so that only those persons whose role requires them to access the Diversity Data are able to access it (for example, any IT specialists assisting with anonymisation);
 - c. Encrypt removable media on which the data is stored, including tapes, disks, removable hard drives, CDs and DVDs; and
 - d. Include confidentiality provisions in any outsourcing arrangement with a third party who may process the Diversity Data on behalf of the chambers.
- 7.3 The Diversity Data Officer shall be responsible for establishing secure electronic and physical barriers to the Diversity Data. Only those persons whose business role requires them to have access should have access and all such personnel, including the Diversity Data Officer, must be informed about the confidentiality of the Diversity Data and, where necessary, receive appropriate training about how to use the Diversity Data.

- 7.4 In the event of accidental or unlawful destruction, loss, alteration, disclosure of, or access to, the Diversity Data which is likely to adversely affect the privacy of individuals, the Diversity Data Officer must investigate the incident and take action to mitigate the consequences such as seeking to recover the affected data, rectifying the circumstances that led to the incident and putting in place measures to ensure that such an incident is not repeated. In particular, the Diversity Data Officer must promptly notify:
- a. the Information Commissioner's Office; and
 - b. where the Information Commissioner's Office so advises, the individuals likely to be affected.

8. Anonymisation, retention and destruction of Diversity Data

- 8.1 Chambers must anonymise Diversity Data as soon as reasonably practicable in order to ensure that individual members of the workforce cannot be identified in connection with their diversity characteristics. Chambers should take a reasonable and proportionate approach to anonymisation, and should have due regard to good practice set out in guidance such as that produced by the Office for National Statistics [(such as Statistical Disclosure Control)] and the Information Commissioner's Office [(including any Anonymisation Code of Practice)].
- 8.2 Chambers shall be entitled to retain anonymised data indefinitely and must do so for at least 12 (twelve) months after publishing the data in order that copies may be provided to the Bar Standards Board on request, for example where the Bar Standards Board queries any summaries produced by chambers. For the avoidance of doubt, the Bar Standards Board will not in any circumstances seek access to unanonymised Diversity Data.
- 8.3 Individuals should be informed that they have a right to object to the collection and use of their Diversity Data at any time, even if they have consented on a previous occasion, and to withdraw consent previously given, at any time. In the event that an individual withdraws their consent to the use of their Diversity Data or objects to the use of their Diversity Data, the chambers is required promptly to delete or destroy any Diversity Data which includes the personal data of that individual and to inform the individual accordingly (and within at least 21 (twenty-one) days of receiving notification from the individual of the objection or withdrawal of consent).
- 8.4 On receipt of a withdrawal of consent or objection and where the anonymised data has already been published in summary form, there is no requirement to extract that individual's personal data from the published summary unless the individual alleges that continued

publication of the anonymised data is causing or is likely to cause them or someone else substantial damage or distress. In such circumstances, the Diversity Data Officer shall promptly examine whether the publication of the anonymised data identifies the individual in order to determine whether the continued publication of the data is justified. This determination should include, for instance, whether substantial damage or distress is or is likely to be caused and if so whether this is unwarranted. Should the publication be deemed unjustified, the Diversity Data Officer must ensure that the anonymised data is removed from publication until, as far as reasonably possible, the individual's personal data is extracted. Once the individual's personal data has been extracted and securely destroyed, the anonymised data shall be re-published in summary form. The Diversity Data Officer must respond to the individual explaining the decision that the chambers has reached and any action taken, within at least 21 (twenty-one) days of receiving the allegation from the individual.

9. Publication and Sharing of Anonymous Data

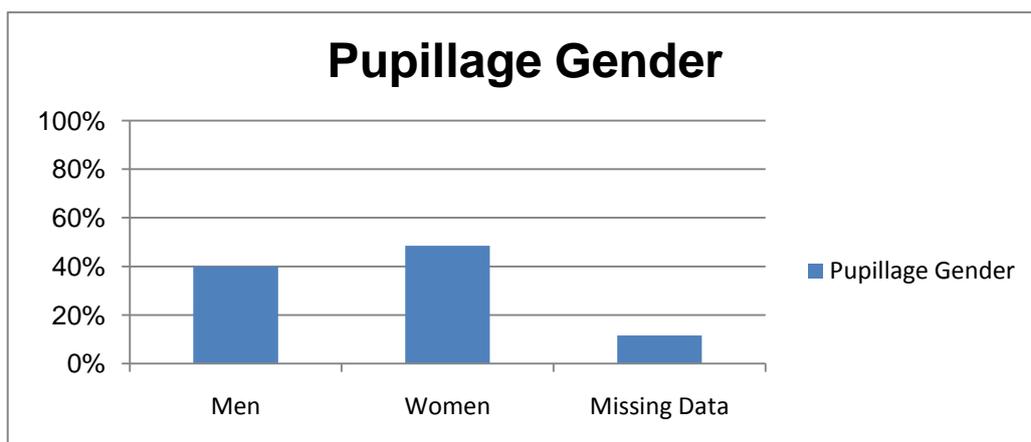
- 9.1 Chambers must publish a summary of the anonymised data on their website or, if they do not have a website, make such information available to the public on request by 31st December 2012 in the first instance and thereafter every three years. Where chambers do not have a website, chambers should use reasonable and proportionate means to notify the public that any member of the public can request and receive a copy of the summarised anonymised data from the chambers, in electronic or hard copy form, as appropriate.
- 9.2 When publishing the summary of the anonymous data, chambers should not include Diversity Data relating to the diversity characteristics of sexual orientation, religion or belief unless there is consent to this from the members of the workforce.
- 9.3 The summary of anonymised data should include a breakdown of each diversity characteristic by job status and role, in a manner which reflects seniority: For example, chambers' should publish summary data from barrister members in categories representing Queen's Counsel, junior tenants and pupils, and from non-barrister members in categories representing directors and general managers, senior and junior clerks and other administrative staff.
- 9.4 Notwithstanding efforts made to anonymise data, rare combinations of characteristics will generally lead to the identification of individuals. The summary of anonymous data must not include any analysis that links responses against different diversity characteristics or individuals. For instance, the analysis should not indicate that there are 11 (eleven) female barristers of which 1 (one) considers themselves to be disabled.

9.5 In the event that there is a real risk that the publication of the summary of anonymous data would result in the identification of an individual in respect of one or more of their diversity characteristics, chambers are not required to publish that part of the information in the summary of anonymised data on their website or to make such information available to the public on request, unless the individuals who have provided the information have been notified that publication may result in the identification of an individual, and consent to such publication in such circumstances is provided by each. The Diversity Data Officer will need to make a judgment on reasonable grounds as to whether, in the given circumstances, there is a real risk of this.

9.6 However, as a general rule the risk of identification is considered likely to occur where the number of individuals identified with any particular characteristic within any category is fewer than 10 (ten),⁴ for example where 4 (four) junior tenants identify themselves as disabled. In those circumstances, publication must not occur unless full and free consent to such publication, in the knowledge of that risk, has been obtained. Whilst there may be circumstances where the individuals concerned are all willing to consent to such publication, there should never be any question whatsoever of any pressure on them to do so.

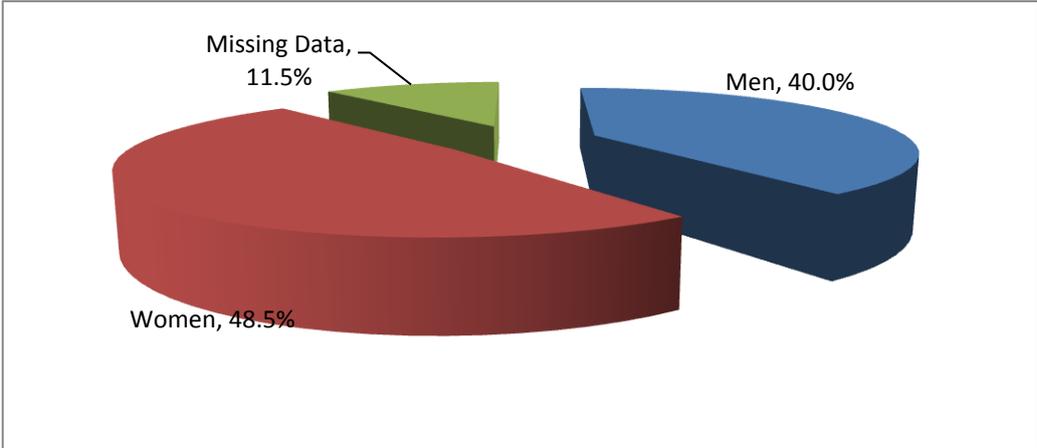
9.7 Data can be published using either percentages or numbers and can be presented in graph or table format. Data may be presented as is set out at figs.1 and 2 below. Numbers fewer than 10 in a given category can be represented using an asterisk or a range (for example, <10).

Fig 1.



⁴ The approach of not requiring publication of diversity data where those in a particular group are fewer than 10 derives from and is supported by government guidance on the approach to be taken by public bodies in publishing their own diversity data: <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/specific-duties>.

Fig 2.



Annex A: Sample Data Diversity Policy

This is the Data Diversity Policy for *[Name]* which is established in accordance with [paragraphs 408.2 (k) – (u) of] the Bar Standard Board Code. This policy is effective as of *[insert date]*.

- (1) The name of the registered data controller for *[Name]* is *[insert name]* and the data controller's registration number on the Data Protection register is *[insert number]*.
- (2) The name of the Diversity Data Officer is *[insert name]*.
- (3) Collection of Diversity Data

Members of chambers' workforce are to be given the opportunity to provide their Diversity Data for collection in accordance with the requirements set out in the Code of Conduct for the Bar. The Diversity Data Officer shall be responsible for arranging and supervising the collection of Diversity Data.

- (4) Why Diversity Data is collected

Individuals have the opportunity to provide their Diversity Data in order for *[Name]* to publish an anonymous summary of the Diversity Data. This provides transparency concerning recruiting and employment activities and aims to encourage an independent, strong, diverse and effective legal profession.

Please note that you are not required to provide your Diversity Data. You are free to choose whether or not you wish to provide all, some or none of your Diversity Data.

- (5) How Diversity Data is collected

Diversity Data will be collected through *[insert details i.e. completing an online form/ survey or completing a hard copy form plus details of how the individual returns the completed form to the Diversity Data Officer if relevant]*.

You will be provided with a copy of the [online] form [by email], together with a copy consent form which you must complete if you wish to provide your Diversity Data. You will be notified of the deadline for completing the forms, which will be no less than 7 days from the date of notification.

(6) Keeping Diversity Data secure

All Diversity Data that is collected from individuals will be kept securely. *[Name]* shall put the following security measures in place to protect Diversity Data:

[Set out the measures that will be used to protect the Diversity Data against unlawful and unauthorised disclosure or access and the way in which it will be deleted]

[Name] will not share Diversity Data with any third parties, save as set out in paragraph 4 above.

Should you access or disclose Diversity Data accidentally or intentionally when you are not authorised to do so, you must notify the Diversity Data Officer immediately. Failure to do so may amount to misconduct and result in disciplinary proceedings before *[Name]* or the Bar Standards Board.

(7) Anonymising Diversity Data

[Name] is required to anonymise Diversity Data before publishing it in summary form. We will securely anonymise Diversity Data through *[insert details of how anonymisation is achieved and categories against which data will be summarised]*.

(8) Publication of the anonymised summary of Diversity Data

[Name] is required to publish Diversity Data in an anonymised summary format within the three (3) month period following the date for collection specified by the Bar Standards Board. The summary will break down the information in a way which categorises each diversity characteristic against job status and role, in a manner which reflects seniority within *[Name]*. The summary will be *[set out whether the summary will be published online if the chambers has a website or made available on request where the chambers does not have a website]*.

Diversity Data relating to sexual orientation and religion or belief will **not** be included in the anonymised summary format for publication.

Where there are fewer than 10 (ten) individuals within each published category who identify through the questionnaire with the same diversity characteristic (for example, 4 (four) individuals with a job role at the same level of seniority identify themselves as disabled), *[Name]* shall not publish the anonymous data relating to those individuals and that diversity characteristic unless the individuals concerned have each consented to such publication, in the knowledge that they may be identified against that characteristic.

[Since [Name] currently has fewer than 10 (ten) individuals in [the workforce/the job role of [name of role(s)]], individuals [in those roles] should be aware that by providing their Diversity Data it may be possible for a third party to identify them even though the Diversity Data is anonymised.]

(9) Destruction of Diversity Data

[Name] shall securely destroy the Diversity Data collected promptly after the Diversity Data has been anonymised and in any event within 3 (three) months following the date for collection specified by the Bar Standards Board (usually the date you receive notification under paragraph (5) above). Secure destruction means that as far as possible we shall not hold the Diversity Data in any way where it is possible to identify an individual. In practice *[insert details of how secure destruction will be achieved]*.

Anonymised data will be kept for 12 months before being destroyed as above.

(10) Questions or complaints

Individuals have a right to withdraw their consent or object to the use of their Diversity Data at any time.

Where your data has already provided and you wish to withdraw your consent to its use, please notify the Diversity Data in writing [*insert contact details*]. He/she will promptly to delete or destroy any Diversity Data which includes your personal data and will confirm to you that this step has been taken within 21 days of receiving notification from you.

Where the anonymised data has been published in summary form, the Diversity Data Officer will not extract your personal data from the published summary unless you have reason to believe that continued publication of the anonymised data is causing or is likely to cause you or someone else substantial damage or distress. In such circumstances, the Diversity Data Officer will consider the reasons you have put forward and shall respond within 21 days from the date you notify him/her of your belief to let you know whether he/she has determined that the continued publication of the data is justified and, if not, to confirm the action taken to extract your data from the published summary and to delete or destroy any copies.

Should you have any questions or complaints about this Diversity Data Policy, please contact the Diversity Data Officer on [*insert contact details*].

Annex B: Sample Notification and Consent Form for Diversity Data

[Name] is required by the Bar Standards Board to give you the opportunity to submit diversity data so that, as further described below and in the Diversity Data Policy, such data may be published in anonymised summary form. This requirement is in order to provide transparency concerning recruiting and employment activities and aims to encourage an independent, strong, diverse and effective legal profession. Your diversity data will be processed by the Diversity Data Officer (and by other parties under his/ her direction) in order to fulfil the requirements set down by the Bar Standards Board.

Diversity data is considered to be information relating to the following characteristics: age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities. You may submit this diversity data through the questionnaire *[attached or insert link]*. You are under no obligation to provide diversity data and if you submit diversity data, you do so voluntarily. **Please read this notification before you consent to the submission of your diversity data.**

Apart from data relating to religion or belief and sexual orientation, which will not be published unless there is consent from all members of the workforce, any diversity data that you submit will be processed for the purposes of publishing an anonymous summary *[on [Name] website or made available on request to members of the public in electronic or hard copy form]*. Diversity data you submit relating to religion or belief and sexual orientation will be anonymised and held by *[Name]* for 12 months but not published. The anonymous summary will categorise each diversity characteristic against job status and role, in a manner which reflects seniority within *[Name]*.

Please tick this box to confirm that you explicitly consent to providing the data and the processing of your diversity data as described in this notice and consent form [].

If there are fewer than 10 individuals in chambers/a category/name/job role(s), it may be possible for a third party to identify individuals when anonymous data is published.

If you explicitly consent to the publication of your diversity data in anonymous form even if there are fewer than 10 individuals identified against one or more of the characteristics, please tick this box to confirm this []. You are under no obligation to give this consent.

If you would like further information about the collection and use of diversity data, please refer to our Diversity Data Policy available here *[insert link or similar]*. You have a right to object to the use of your diversity data at any time, or withdraw your consent to its use, by contacting the Diversity Data Officer at *[insert details]*.

Annex C: Model Diversity Data Questionnaire

Please answer each question in turn by choosing one option only, unless otherwise indicated. If you do not wish to answer the question please choose the option “Prefer not to say” rather than leaving the question blank.

About you

If you are an authorised person⁵ for the purposes of the Legal Services Act 2007 (i.e. you hold a practising certificate issued by one of the approved regulators), please indicate your professional qualification(s) and role (tick all that apply if you are dual qualified and have a current practising certificate from more than one approved regulator):

		✓
Barrister	QC	
	Tenant / Member	
	Other (incl Pupil)	

If you do not fall into any of the categories listed above, please indicate which of the following categories best fits your role:

	✓
Any other fee earning role (e.g. trainee solicitor, legal executive (not Fellow), paralegal)	
Any role directly supporting a fee earner (e.g. legal secretary, administrator, barristers clerk, practice manager, legal assistant, paralegal)	
A managerial role (e.g. Director / non-lawyer Partner / Chief Executive /	

⁵ The definition of an “authorised person” is set out in the Legal Services Act 2007, Section 18(1). For the purposes of this Act “authorised person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means – (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or (b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity.

Practice Director or similar, Head of Legal Practice (HoLP) / Head of Finance & Administration (HoFA) or similar	
An IT/HR/other corporate services role	
Prefer not to say	

Your role in your organisation

Please note that this question applies to self-employed as well as employed persons.

(a) Do you have a share in the ownership of your organisation (e.g. equity partner, shareholder)?

	✓
Yes	
No	
Prefer not to say	

(b) Do you have responsibility for supervising or managing the work of lawyers or other employees?

	✓
Yes	
No	

Prefer not to say	
-------------------	--

Age

From the list of age bands below, please indicate the category that includes your current age in years:

	✓
16 – 24	
25 – 34	
35 – 44	
45 – 54	
55 – 64	
65+	
Prefer not to say	

Gender

What is your gender?

	✓
Male	
Female	
Prefer not to say	

Disability

The Equality Act 2010 generally defines a disabled person as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities.

(a) Do you consider yourself to have a disability according to the definition in the Equality Act?

	✓
Yes	
No	
Prefer not to say	

(b) Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?

	✓
Yes, limited a lot	
Yes, limited a little	
No	
Prefer not to say	

Ethnic Group

What is your ethnic group?

Asian / Asian British

	✓
Bangladeshi	
Chinese	
Indian	
Pakistani	
Any other Asian background (write in)	

Black / African / Caribbean / Black British

	✓
African	
Caribbean	
Any other Black / Caribbean / Black British (write in)	

White

	✓
British / English / Welsh / Northern Irish / Scottish	
Irish	
Gypsy or Irish Traveller	
Any other White background (write in)	

Other ethnic group

	✓
Arab	
Any other ethnic group (write in)	

Prefer not to say

	✓
Prefer not to say	

Religion or belief

What is your religion or belief?

	✓
No religion or belief	
Buddhist	
Christian (all denominations)	
Hindu	
Jewish	
Muslim	
Sikh	
Any other religion (write in)	
Prefer not to say	

Sexual orientation

What is your sexual orientation?

	✓
Bisexual	
Gay man	
Gay woman / lesbian	
Heterosexual / straight	
Other	
Prefer not to say	

Socio-economic background

(a) If you went to University (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?

	✓
Yes	
No	
Did not attend University	
Prefer not to say	

(b) Did you mainly attend a state or fee paying school between the ages 11 – 18?

	✓
UK State School	
UK Independent / Fee-paying School	
Attended school outside the UK	
Prefer not to say	

Caring responsibilities

(a) Are you a primary carer for a child or children under 18?

	✓
Yes	
No	
Prefer not to say	

(b) Do you look after, or give any help or support to family members, friends, neighbours or others because of either:

- Long-term physical or mental ill-health / disability
- Problems related to old age

(Do not count anything you do as part of your paid employment)

	✓
No	
Yes, 1 – 19 hours a week	
Yes, 20 – 49 hours a week	
Yes, 50 or more hours a week	
Prefer not to say	

Thank you for completing this questionnaire