

## EQUALITY, DIVERSITY & INCLUSION POLICY

### **A. Introduction and Statement of Principles**

1. This Policy applies to members of Chambers, pupils (defined as including those on probationary tenancy and ‘squatters’), mini pupils, employees and workers, applicants for any of the above, those undertaking a work-experience placement in Chambers organised by a Bar placement scheme, clients, including lay and professional clients and visitors to Chambers.
2. 5 Essex Chambers is committed to providing a fair, inclusive and supportive working environment that promotes equal access to opportunities - as well as wellbeing<sup>1</sup> - and enables the continuous professional and personal development of our barristers, pupils and staff. We believe that a fair, diverse, and inclusive workplace drives success and that all individuals coming into contact with Chambers should feel valued, included and able to be themselves. We believe that everybody should be treated with dignity and respect.
3. 5 Essex Chambers will not discriminate on the grounds of any of the following protected characteristics identified in the Equality Act 2010:
  - Age;
  - Disability;
  - Gender reassignment;
  - Marriage and civil partnership;
  - Pregnancy and maternity;
  - Race;
  - Religion or belief;
  - Sex; and

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<sup>1</sup> Our commitment to wellbeing being set out in 5 Essex Chambers’s Mental Health and Wellbeing Policy 2018

- Sexual orientation.
4. 5 Essex Chambers will not tolerate any form of unlawful and unfair discrimination, including the following:
- Direct discrimination - less favourable treatment of a person in the same or similar circumstances because of a protected characteristic;
  - Indirect discrimination – the unjustifiable application of an apparently neutral provision, criterion or practice, the effect of which is to put persons with a protected characteristic at a particular disadvantage compared to others;
  - Victimisation – the subjection of one person by another to a detriment because they have done, or the victimiser believes that the other person has done or may do, a protected act such as making an allegation of discrimination, giving evidence in proceedings relating to discrimination, bringing proceedings in relation to discrimination or doing any other thing for the purposes of equality legislation or in connection with it;
  - Harassment<sup>2</sup> – unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating a person’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person;
  - Sexual harassment – unwanted conduct of a sexual nature/related to gender, gender reassignment or sex, which has the purpose or effect of violating a person’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person and/or less favourable treatment for rejecting or refusing to submit to such conduct; and
  - Failure to make reasonable adjustments to a provision, criterion, physical feature or practice which puts a disabled person at a substantial disadvantage in comparison with a non-disabled person and/or unreasonable failure to provide auxiliary aids where to do otherwise would place a person at a substantial disadvantage.

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<sup>2</sup> This Policy should be read with 5 Essex Chambers’s Anti-Harassment Policy

5. 5 Essex Chambers is committed to being an anti-racist organisation and has a zero-tolerance approach to racism and any other form of discrimination. This Policy should be read with Chambers' Anti-Racist Statement, which is published on Chambers' website.
6. 5 Essex Chambers is committed to achieving the Bar Council's stated vision of "a profession representative of all and for all" by identifying and seeking to address barriers and assumptions that inhibit the progression of those with a protected characteristic or those from under-represented and disadvantaged backgrounds into and within the profession.
7. We are committed to making reasonable adjustments in order to remove or reduce substantial disadvantage for disabled people working within Chambers or using our services.
8. 5 Essex Chambers respects and values different ways of thinking and recognises that a diversity of cognitive approaches is a source of great strength and worth within a genuinely inclusive workplace. We will support those who identify as neurodivergent whether or not they are disabled within the meaning of the Equality Act 2010.
9. We recognise that:
  - Neurodivergent persons may not have a formal diagnosis or assessment, that a lack of diagnostic support can be a barrier within the workplace for those individuals and others and that individuals must not be subject to unfavourable treatment if they choose to disclose a neurodivergent condition;
  - Persons who are neurodivergent can face discrimination and stigma in wider society, that they may be unwilling to undergo diagnosis or assessment, and that individuals must not be subject to unfavourable treatment because they choose not to disclose a neurodivergent condition;
  - Each person is unique and that there can be a high degree of overlap between neurodivergent conditions, and that consequently any support needs must be identified and implemented on the basis of personal evaluation and individual consultation – not assumptions or stereotypes.
10. 5 Essex Chambers is committed to:

- Supporting individuals to obtain a diagnosis or assessment should they want one;
  - Encouraging early disclosure within a genuinely supportive and inclusive environment if a person feels it would assist in removing barriers, avoiding inadvertent discrimination, and encouraging appropriate support if they would like to make a disclosure for any other reason;
  - Working to eliminate barriers (including prejudice) that neurodivergent people can face in the workplace;
  - Taking all reasonable steps to ensure that internal communications, training programmes, and testing requirements (such as to complete training courses) are accessible for neurodivergent individuals;
  - Raising awareness of neurodiversity in the workplace;
  - Considering requested changes and taking steps to eliminate potentially discriminatory practices in all aspects of our work / Chambers' life.
11. 5 Essex Chambers recognises that some people are transgender and that not everyone feels that their gender can be defined within the margins of binary gender. Chambers is supportive of those who define themselves as trans, non-binary, and gender fluid. Barristers and members of staff in Chambers will endeavour to use an individual's preferred pronouns and title and will not make assumptions about gender identity. This Policy should be read with Chambers' Trans Inclusion Statement, which is available on Chambers' website.
12. The principles set out above will be applied to all areas of Chambers' activities, in particular:
- Training;
  - Recruitment and selection;
  - Terms of membership and employment, benefits, facilities and services;
  - Fair access to and allocation of work; and
  - Grievance and disciplinary procedures.

## **B. Responsibility for Equality, Diversity and Inclusion**

**EDIO and Deputy EDIOs and the ED&I Team**

13. 5 Essex Chambers has an Equality, Diversity and Inclusion Officer (“EDIO”), as required by the Bar Standards Board, along with two Deputy EDIOs. To ensure that a coordinated approach to equality, diversity and inclusion is taken in Chambers, the EDIO leads an Equality, Diversity and Inclusion Team (“ED&I Team”), comprising:
  - the EDIO and the Deputy EDIOs;
  - the Diversity Data Officer;
  - a member of each of the following Chambers’ committees, who holds a specific equality, diversity and inclusion remit: the Management Committee, the Pupillage Committee and the Business Development Committee; and
  - the member of Chambers responsible for advising the Management Committee on the BSB’s requirements for chambers; and
  - the Senior Clerk.
14. The ED&I Team meets quarterly and the EDIO reports quarterly to the Management Committee on its work and makes recommendations.
15. In accordance with rC110(2) of the BSB Equality Rules, 5 Essex Chambers has created an ED&I Action Plan, which implements this Policy. It sets out the actions to which Chambers has committed in order to ensure that the principles of equality, diversity and inclusion are embedded into the framework of its day-to-day work and to prevent unlawful discrimination. It also includes actions to which Chambers has committed in order to support the promotion of equality, diversity and inclusion at the Bar more widely. The EDIO, in conjunction with the ED&I Team, will review and update the Action Plan annually.
16. The EDIO, reporting to the Management Committee, will regularly monitor the effectiveness of this Policy to ensure that it is working in practice and review and update this Policy at least every three years.
17. Any queries about the interpretation or application of this Policy should be raised with the EDIO or the Deputy EDIOs in the first instance.

18. The EDIO, reporting to the Management Committee, will review other Chambers' policies and procedures on a regular basis to ensure that these are compatible with 5 Essex Chambers's equality, diversity and inclusion principles.

### **Dissemination of and access to this policy**

19. This Policy will be made publicly available on 5 Essex Chambers's website.
20. It will be provided to all members of Chambers, pupils, employees and workers on joining/commencing work for Chambers. In the case of pupils, this will be the responsibility of the Pupillage Committee. In the case of new tenants, employees and workers, this will be the responsibility of the Chair of the Management Committee, delegated to the Chambers Administrator and Senior Clerk.
21. Mini pupils and those undertaking work experience placements will be directed to this Policy on Chambers' website.

### **Individual responsibilities under this policy**

*Responsibilities applicable to members of Chambers, pupils, employees and workers, mini pupils and those on a work experience placement*

22. All members of Chambers, pupils, employees and workers, mini pupils and those undertaking work experience placements:
  - are required to read and comply with this Policy; and
  - have personal responsibility for the practical application of this Policy, which extends to the treatment of applicants, employees (including former employees), clients and visitors.
23. All members of Chambers, pupils, employees and workers, mini pupils and those undertaking work experience placements are also required to read and comply with the Chambers Anti-Harassment Policy appended to this Policy.
24. Any social media activity conducted by a member, pupil, employee or worker must comply with this Policy and the Anti-Harassment Policy, and, in particular, must adhere to the

principles set out at paragraphs 2 to 8 above, even if the activity is conducted in a personal capacity, in a pseudonym, or anonymously.

*BSB duties applicable to barristers*

25. It is a Core regulatory duty of every barrister not to discriminate unlawfully against any person: see CD8 in the Bar Standards Board Handbook. 19. The Core Duty is supplemented by rC12. This fundamental equality principle is drafted to accord with the provisions of the Equality Act 2010, which has specific provisions applying to barristers (s.47).
26. The requirement not to discriminate applies to a barrister in all aspects of their professional life. The requirement not to discriminate applies to a barrister's relationship with "any other person" in the course of his/her professional dealings. These will include:
  - Chambers' employees;
  - Instructing solicitors and their employees;
  - Lay clients;
  - Court staff;
  - Judges;
  - Other barristers;
  - Pupils;
  - Mini-pupils; and
  - Any person on a work-experience placement.
27. Every barrister also has a duty to report serious misconduct to the Bar Standards Board under rC66 of the Code of Conduct. Serious misconduct is likely to include unlawful discrimination, victimisation or harassment.

**Management responsibilities under this policy**

28. Senior members of staff and members of the Management Committee, Pupillage Committee and Business Development Committee have responsibility for ensuring that the principles set out in this policy are implemented effectively. Requirements relating to

training, fair recruitment, terms of membership and employment, benefits, facilities and services, fair access to and allocation of work and grievance and disciplinary procedures are set out below.

**C. Training in equality, diversity and inclusion and fair recruitment**

29. All barristers and members of staff in Chambers **must** undertake equality, diversity and inclusion training, to include comprehensive anti-racist training and unconscious bias training. Chambers will provide this training. It will be provided annually for new joiners, and refresher training will be provided to barristers every three years and to staff annually.
30. All barristers and members of staff who are involved in recruitment will be provided with fair recruitment training, and refresher training will be provided when required, and at least every three years.

**D. Fair recruitment**

31. Selection for pupillage and tenancy, as well as any selection for staff positions must be against objective criteria and free from discrimination.
32. The following principles should apply whenever recruitment or selection for positions takes place:
  - a. Assumptions that only certain types of person will be able to become a tenant, pupil, mini-pupil or employee or perform certain types of work will not be made;
  - b. Recruitment of any kind solely or primarily by word of mouth is unacceptable and will not play any part in 5 Essex Chambers's recruitment processes;
  - c. The criteria applied in the recruitment of pupils, tenants and staff shall be objective and free, at all stages, from assumptions based on stereotypical views or expectations of the behaviour and characteristics of any particular group;
  - d. If used, selection tests will be specifically related to membership/pupillage/mini-pupillage/job requirements and should be designed to assess the applicant's actual or inherent ability to do or train for the work;
  - e. Selection tests will be reviewed regularly to ensure they remain relevant and free from any unjustifiable bias, either in content or in scoring mechanism;



- f. All applications will be processed in the same way, other than applications from disabled applicants where reasonable adjustments are required;
- g. Questions at interview will relate to the requirements of the position. If it is necessary to assess whether the personal circumstances of a particular applicant might affect job performance, this will be done objectively without assumptions being made which are based on stereotyped beliefs;
- h. Where Chambers' arrangements for recruitment and selection put disabled people at a substantial disadvantage for a reason connected with their disability, adjustments to the arrangements that are reasonable in all the circumstances will be made in respect of that applicant. Any individual making recruitment or selection decisions regarding recruitment must have undergone the relevant fair recruitment training provided by Chambers and have read and understood this policy.

**E. Terms of membership/pupillage/mini-pupillage/employment, benefits, facilities and services**

- 33. The following principles shall apply to terms of membership/pupillage/mini-pupillage/employment, and associated benefits, facilities and services:
  - a. The terms of membership/pupillage/mini-pupillage/employment, benefits, facilities and services available will be reviewed regularly to ensure that they are provided in a way which is free from unlawful discrimination, and;
  - b. Where Chambers' arrangements relating to terms of membership/pupillage/mini-pupillage/employment, benefits, facilities and services put disabled workers at a substantial disadvantage for a reason connected with their disability, adjustments to the arrangements that are reasonable in all the circumstances will be made in respect of that disabled person.

**F. Fair access to and allocation of work**

- 34. Distribution of work to all members of Chambers and working pupils must be carried out in a manner that is fair to all and without unlawful discrimination.
- 35. When contacted by solicitors or another instructing organisation regarding a request for counsel for unallocated work (i.e. where the solicitor does not request a single named

barrister), or where counsel requested is unable to accept the work offered, or where another barrister is seeking an unnamed junior or leader, a member of the clerking team will ask relevant questions required to obtain an overview of the case in order to suggest suitable candidates for the work offered.

36. All members of Chambers who are considered suitable on grounds of experience, seniority, cost and availability will be proposed for the work offered.
37. All clerks involved in the distribution of work will be provided with equality and diversity training.
38. 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 Solicitors Regulation Authority Handbook 2017 prohibits solicitors from discriminating unlawfully against any person in the course of their professional dealings. Such dealings will include the instruction of barristers. Clerks will deal with any request that is potentially discriminatory (for example requests from solicitors for a barrister of a particular sex or race for a particular piece of work) politely but firmly. 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.
39. 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, a full note of the incident should be made immediately, and the solicitor should be reported to his or her professional disciplinary body.
40. These situations can be difficult to deal with and all cases of suspected discrimination should be referred to a clerk's team leader and/or the Senior Clerk, who should consult with the EDIO and/or the Deputy EDIOs where necessary.

41. All clerks and members of staff concerned in any way in the allocation of work in Chambers shall comply with this policy and such requirements for data entry in relation to unallocated work as is specified in instructions from the Senior Clerk and/or Management Committee from time to time.
42. The Senior Clerk will provide data relating to unallocated work to the EDIO on a quarterly basis. The EDIO will consider the data from an ED&I perspective and, if necessary, meet with the Senior Clerk to discuss this. The EDIO will report any concerns relating to work allocation to the Management Committee. The EDIO will regularly review the process for monitoring work allocation in Chambers and, where appropriate, make recommendations to the Management Committee in relation to how this may be improved.

**G. Complaints, grievances and disciplinary procedures**

43. Chambers has confidential and supportive procedures for reporting any experiences of discrimination, bullying, harassment or victimisation of any barrister or member of staff.
44. Any barrister or member of staff who wishes to raise an equality, diversity and inclusion issue which relates to Chambers' business, or activities relating to Chambers' business ("the issue"), should raise it with the EDIO. If in the opinion of the EDIO the issue is more properly dealt with as a formal complaint they may, with the consent of the person who raised the issue, refer the issue to the Head of Chambers to be addressed as a formal complaint under the Chambers Grievance Procedure.
45. If the issue is not referred to the Head of Chambers to be dealt with as a formal complaint, the EDIO will, with the assistance of the Deputy EDIOs if necessary, carry out all necessary investigations into the issue and give all relevant persons the opportunity to state their opinion on the issue. As far as possible the investigation of the issue will be concluded within 28 days of it being raised.
46. On completion of the investigation the EDIO will report their findings to the person who raised the issue and to the Head of Chambers. The report will include details of any changes to Chambers' policies or practices which the EDIO considers should be

implemented by Chambers as a result of their investigation. The report will be retained for a period of one year, or such longer period as may be necessary to ensure any recommended changes are implemented.

47. All conversations and documents relating to any issue will be treated as confidential and will be disclosed only to the extent necessary for the investigation of the issue. The EDIO will keep a record of every issue raised in accordance with this policy showing:
  - a. the nature of the issue;
  - b. any report prepared on the conclusion of the investigation; and
  - c. any steps taken as a result of the issue having been raised.
48. Members/pupils/mini-pupils/employees/workers who, in good faith, bring a grievance (or assist another to do so) either under this policy or otherwise in relation to an equal opportunities matter will not be disciplined, dismissed or otherwise victimised for having done so.
49. Chambers also supports the use of external resources for reporting behaviour that is contrary to this policy, for example ‘Talk to Spot’, the online tool for the Bar confidentially and anonymously to report inappropriate behaviour.
50. Any client wishing to raise an equal opportunities complaint should do so using the specific Client Complaints Procedure.
51. All members/pupils/mini-pupils/employees/workers have the right to work in an environment which is free from any form of conduct as described at paragraph 4 above. It is Chambers’ policy that any member, pupil, employee or worker found to have engaged in this form of conduct will be liable to disciplinary action which could result in a sanction against them, pursuant to the Chambers Constitution, Chambers’ Anti-Harassment Policy, the Pupillage Handbook and/or Chambers’ Disciplinary Procedure.

## **H. Equality monitoring and review**

52. 5 Essex Chambers recognises the need to collate, monitor and review diversity data in order to ensure that Chambers may best fulfil its commitment to equality, diversity and inclusion, and meet the BSB's requirements in this respect.
53. In accordance with the Bar Standards Board Handbook Equality Rules, Chambers collates and publishes workforce diversity data at least every three years, in accordance with Chambers' Diversity Data Policy.
54. In seeking to identify and eliminate sources of unintended discrimination, the ED&I Team will, in conjunction with the Management Committee, the Pupillage Committee and the Business Development Committee (as appropriate), monitor the data in relation to unallocated work, pupillage and recruitment.
55. The monitoring data will be analysed at the following intervals:
  - a. Unallocated work: Quarterly (see paragraph 39 above);
  - b. Pupillage and recruitment: Annually.
56. Where under-representation of a particular group is identified, the SDIO/Deputy EDIOs Equality shall notify the Heads of Chambers. Chambers will seek to improve the position of the under-represented group including, if necessary, taking steps to encourage applications from members of those groups and/or positive action within the meaning of s.159 of the Equality Act 2010.

**I. Training / seminars provided to lay and professional clients by Chambers or individual tenants**

57. Such events will be ED&I impact assessed by the ED&I Team so as to ensure so far as is possible that the effect of protected characteristics have been taken into account and accommodated in terms of:
  - a. physical access to and use of training/training venues;
  - b. provision of facilities;
  - c. formulation and production of support material;
  - d. times of delivery; and
  - e. method and ease of feedback.

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