



Celebrating 60 years of support, representation and education for Employed Barristers

ATTORNEY GENERAL'S CIVIL PANELS DIVERSITY PROJECT

A. INTRODUCTORY AND BACKGROUND

1. By email of 13 May 2025, the Government Legal Department (“GLD”) seeks views from Specialist Bar Associations and others about its Panel Counsel Diversity Project. GLD’s Counsel Diversity Project is looking at how it can improve the diversity of the counsel that GLD appoints and instructs. GLD are reviewing our approach to panel counsel recruitment.
2. GLD would like to know how diversity of Panel Counsel may be improved by changes to the recruitment process. GLD are particularly keen to hear views regarding:
 - (a) Any barriers which prevent or discourage counsel who share particular protected, or other diversity related, characteristics from applying to join the panels.
 - (b) Any aspects of the recruitment process which might disadvantage candidates who share particular protected, or other diversity related, characteristics.
 - (c) How the panel recruitment processes might be improved to increase the diversity of those applying to the panel and increase the diversity of those who are successful in being appointed.
 - (d) Any other issues related to the recruitment of panel counsel, or other reflections, regarding how to promote and increase diversity amongst those appointed to the various panels.

3. On 26 September 2022, the Bar Council of England and Wales (“**Bar Council**”) issued a press release¹ about the diversity of legal panels following a Bar Council report on the same (the “**2022 Report**”). The 2022 Report found that:
 - (a) At both junior and KC level there was an unmistakable lack of ethnic diversity across the panels. The makeup of government panels is disproportionately White.
 - (b) This was in sharp contrast to the fact that barristers at the Bar are largely representative of the ethnic composition of the population in England and Wales.
 - (c) This becomes worse at higher levels: only three out of 77 panel silks were from ethnic minority backgrounds.
 - (d) There were no Black barristers or Asian women barristers, and only very few Asian men, on any of the KC panels. Although White women are well represented on panels (and are in fact over-represented at KC level, making up over a quarter of Panel Silks), they did not always get equal access to the best quality work available.

B. EXECUTIVE SUMMARY

4. Generally speaking, the current iteration of the GLD criteria for panels almost entirely excludes Employed Barristers and Dual Capacity Barristers and those who have recently been Employed Barristers or Dual Capacity Barristers who have returned to self-employed practice from making successful applications to panels despite all documentation about the panels saying that they are inclusive of Employed Barristers on their face. The criteria and approach to said criteria appear to have the practical effect of making it exceptionally difficult and/or deterring Employed Barristers in particular. This has a corresponding impact on diversity and inclusion. The Employed Bar is more diverse than the self-employed Bar meaning that the current approach by GLD is likely to have a disproportionate impact on those with protected characteristics. Further, the GLD’s approach runs contrary to the One Bar ethos thereby making the process less inclusive where Employed and Dual Capacity Barristers consider that panel work is not available to them. As at 2025, there appear to be no Employed Barristers on Attorney General’s Civil Panel lists.
5. Potential remedies to ensure that GLD’s panels are more diverse and inclusive going forward include but are not limited to (i) recording and monitoring both social mobility and diversity data; (ii) recording and monitoring allocation of panel work by reference to social mobility and

¹ <https://www.barcouncil.org.uk/resource/bar-council-engages-government-on-legal-panels-diversity.html>

diversity data; (iii) having a fair allocation of work policy by reference to the Public Sector Equality Duty contained in ss.149 to 157 of the Equality Act 2010 (“**PSED**”); (iv) ensuring that any and all individuals involved in the GLD recruitment process have thorough understanding of the modern Bar, including the Employed Bar, and barriers faced by particular groups and (v) GLD to consider modifications to the panel criteria to make them substantively inclusive.

C. THE BARRIERS ARISING FROM THE CURRENT CRITERIA AND PROCESS

6. *Requirement for ‘clerking-style administrative support.’* Most institutions that employ Barristers will not have ‘clerking-style administrative support’ with the limited exception of those organisations which effectively operate a chambers within their firm such as DWF Advocacy² by way of example. Moreover, generally Barristers are not trained to undertake the role of clerks or practice managers meaning that requiring or stipulating that a Barrister may effectively clerk themselves is unlikely to be practically feasible where GLD insist on traditional clerking style support. This requirement is likely to be highly off-putting to Employed and/or Dual Capacity Barristers, notably those at the more junior end with less experience, which thereby creates a barrier to that entire cohort who are more likely to be from a wider range of backgrounds as regards ethnicity, gender, disability and social mobility than their self-employed counterparts. The terminology used by GLD in this regard makes clear that whilst in principle Employed and Dual Capacity Barristers may apply for panels, in practice GLD only seek those practitioners from ‘traditional’ chambers in reality.
7. Further, GLD say that traditional clerking support is required without setting out, in terms, specifically what it is that they seek and what is needed in practice. It is probable that more inclusive language that sets out the administrative support that is *in fact* required would enable Employed Barrister to better understand whether they could undertake such tasks themselves or else have constructive discussions with their employers as necessary to ensure that the correct process and/or procedures are in place in accordance with GLD’s requirements.
8. *The advocacy table requiring ‘[a] list the key cases you have undertaken over the past 12 months, detailing the areas of law covered; the courts appeared in; and whether or not [a person was] led.’* This criterion effectively adopts a very narrow and highly traditional definition of advocacy that is limited to that which occurs in Courts and Tribunals. Employed Barristers and those Barristers in self-employed practice who have recently returned from employed practice are prejudiced by this criterion. This is because those Employed Barristers outside of

² See <https://dwfgroup.com/en/services/dwf-chambers>

the CPS and *de facto* chambers within law firms are likely to have limited opportunities to undertake traditional advocacy. Nonetheless, Employed Barristers will frequently undertake advocacy in non-traditional settings, for example presenting cases to internal decision-makers such as the Bank of England's Enforcement and Decision Making Committee, the Financial Conduct Authority's Regulatory Decisions Committee, OFGEM's Enforcement Decision Panel or the Financial Reporting Council's Independent Tribunal. This advocacy will involve the analysis of law, facts, policy and regulation and the oral presentation of arguments and submissions. It will often also involve witness handling and/or the management of expectations of different stakeholders. However, the current criteria and forms used in panel selection do not accommodate these forms of non-traditional advocacy well or at all.

9. Further, given that Employed Barristers will often undertake non-traditional advocacy in their roles, it is simply not possible for those candidates to produce a list of cases in the same way as self-employed practitioners. This places Employed Barristers at a significant disadvantage to their self-employed counterparts. It also disadvantages those barristers who have been employed for significant periods before commencing or returning to self-employed practice since their extensive non-traditional advocacy experience gained in employed is rendered nugatory by the criteria used and the relevant form/application layouts.
10. Unfortunately, there is still a great deal of work to be done in all areas of the Bar as regards diversity and inclusion. The BSB's recent report reflects the often stark pay disparities between men and women and those from certain non-white ethnicities compared with their white counterparts³. These disparities in income are often a function of work quality and work allocation. This means that those with protected characteristics will often have a less compelling and/or extensive case lists and/or traditional advocacy experiences compared to those individuals who do not have protected characteristics.
11. *The advocacy examples:* The points made above in respect of the list of cases are repeated in relation to the requirements for advocacy examples. The form and the information conveyed by GLD at open evenings in respect of panel appointments makes clear that the expectation is for applicants to provide examples of traditional advocacy. This in turn gives the distinct impression by GLD to applicants that those with non-traditional advocacy experience will be at a significant disadvantage to those with traditional advocacy experience which is therefore off-putting to potential applicants such that they simply do not apply.

³ <https://www.barstandardsboard.org.uk/static/3c3bdf61-5404-4e94-82f13b65cbb21eff/58c78b3a-996d-4f39-af71ac89866a5e43/Income-at-the-Bar-by-Gender-and-Ethnicity-2025.pdf>

12. A potential remedy in respect of the list of cases and/or advocacy examples elements of forms could be for GLD to adopt and/or accommodate a broader definition of advocacy and a wider range of matters that can be included in the list that applicants use to demonstrate their skillset and competencies.
13. *The government litigation question:* This requirement favours self-employed Barristers from traditional sets of chambers over Employed Barristers and/or those from non-traditional sets. This is because traditional sets of chambers, notably those in London, put their junior barristers forward for the junior junior panels which means that those practitioners have exposure to those government departments who subsequently instruct individuals on panels and will correspondingly have access to GLD referees in a manner that Employed Barristers will not. Further, it is noted that the junior junior scheme is only open to those who are within 4 years of pupillage. This places those practitioners who are more mature and who may have worked at the Employed Bar whether at a law firm, in a company or at a regulator and then returned to self-employed practice at a distinct disadvantage. This is because those individuals may have a similar level of traditional advocacy and/or chambers experience as someone within 4 years of pupillage, but they cannot gain experience on the junior junior panel which may bolster their confidence, provide them with potential GLD referees and exposure to GLD work and thereby a better understanding of government litigation. GLD may consider varying the criteria for those eligible for junior junior work to make it referable to the amount of experience as opposed to years from pupillage. GLD's approach to the junior junior panel means that those from traditional sets of chambers, notably in London, are at a distinct advantage from the very outset of their careers compared to Employed Barristers and those Barristers who commence in employed practice, including in the public sector, and who return to self-employed practice.
14. *Judicial referees:* GLD makes clear in its literature and during its open day events about panel work that judicial referees are preferred. This again puts Employed Barristers and those from non-white and non-traditional socio-economic backgrounds at a disadvantage. This is for a multitude of reasons including but not limited to that: (i) Employed Barristers are more likely to undertake non-traditional advocacy and will therefore have less access to or sometimes no access whatsoever to judicial referees; (ii) those with protected characteristics are likely to have less exposure to senior judges due to the differentials in the quality and the amount of work that they are allocated irrespective of whether they are in an employed, self-employed or dual capacity role. Whilst the GLD forms make clear that they focus on what a referee can say about a candidate's advocacy, the reality is that a Supreme Court Judge or a Court of Appeal Judge is likely to hold greater weight than a Deputy District Judge; (iii) Harriet Harman KC's

Independent Review of Bullying and Harassment at the Bar⁴ has so far shown that the Barrister victims of bullying and harassment, including by the judiciary, will often be people with protected characteristics. It is plainly more difficult for someone to obtain a reference from a cohort of people that has bullied and/or harassed them. Moreover, the victims of any such bullying and harassment are less likely to seek references from other judges; (iv) those with protected characteristics in particular are less likely to seek judicial references given the lack of diversity of the judiciary and the perceived or actual biases held by the same; (v) finally often those from traditional chambers find it easier to obtain judicial references because said judges are either current or former members of chambers. Traditional sets of chambers, notably those that are the most highly rated by directories, tend to be less diverse than other sets of chambers or employers.

15. It follows that placing less weight on judicial references and more weight on senior individuals who can speak to a person's competencies to undertake panel work could make a material difference to the diversity of panels in the future.
16. *Civil reference pro forma requiring details of (i) knowledge of the applicant's work; (ii) analytical ability; (iii) judgment; (iv) written expression; (v) advocacy and other oral expression; (vi) stakeholder management skills and (vii) any other comments.* The referee form requires a relatively extensive amount of work on the part of referees. Any barrister may find prevailing on a judge to provide a detailed reference as required by GLD to be intimidating given that judges represent the pinnacle of the hierarchy in the legal profession. It maybe off-putting or intimidating for those from certain socio-economic backgrounds and/or who have protected characteristics to approach any senior person for such an extensive reference since those in senior positions, whether employed or not, have a general tendency not to come from lower socio-economic backgrounds and/or have as many or any protected characteristics. The points made above about 15 about judicial referees are repeated more generally, such that they are applicable in respect of senior individuals or others who may provide references.
17. It maybe of assistance, if as part of more contextualised recruitment process, that GLD took into account or consider the greater difficulty and/or effort involved in individuals from certain backgrounds obtaining references and/or support and guidance in respect of their forms. It is noted that GLD has offered mentoring and support to potential applicants in the past. It may also be helpful to assess how helpful and/or effective that mentoring has been for those

⁴ <https://www.barcouncil.org.uk/support-for-barristers/bullying-and-harassment/review.html>

applicants from certain socio-economic backgrounds and/or with one or more protected characteristic.

D. THE IMPACT ON DIVERSITY

18. The barriers described above make the GLD panels less diverse and inclusive. This is because the barriers identified in this paper disproportionately impact those with protected characteristics and those parts of the Bar of England and Wales with the highest representation of individuals with protected characteristics. As far as BACFI are aware there are no Employed Barristers or Dual Capacity Barristers on any of the Attorney General's Panels. This will have an inevitable impact on diversity in particular since according the Bar Council's February 2023 Life at the Employed Bar Report⁵: *"the employed Bar is more diverse than the self-employed Bar, with a higher proportion of women and barristers from an ethnic minority background."* As at 2025 and further to the Bar Standards Board's ("BSB") June 2025 Income at the Bar – by Gender and Ethnicity Report⁶, the Employed Bar as a whole remains more diverse as regards gender, ethnicity and disability than the self-employed Bar.

D. SUGGESTIONS FOR CHANGE

19. Some steps which may assist GLD in making meaningful change in this sphere include but are not limited to:

- (a) **Recording diversity and social mobility data about both current panel members and applicants to panels.** The press releases about the 2022 Report observed that: *"many Government panels do not record the ethnicity and sex of its panel members"* It is noted that the current Attorney General's Panel for Junior Counsel currently collects diversity data in respect of ethnicity and gender but there is no data collected in respect of social mobility. GLD cannot assess the extent and/or nature of any issues related to diversity where it does not have the data to enable it to do so. Data will enable GLD to understand if there are over or under representation of certain demographics including people from certain socio-economic background. Collecting a fuller set of information about panel members and applicants may assist GLD in devising more tailored solutions going forward.
- (b) Connected to recording diversity data, **monitoring the allocation of work to different panel members by reference to diversity data.** The Bar Council endorses a fair allocation

⁵ <https://www.barcouncil.org.uk/static/28e5c2f2-8931-4e95-ab7f91a777466367/Life-at-the-Employed-Bar-report-Feb-2023.pdf>

⁶ *Ibid* at fn3

of work policy acknowledging that this can and does impact diversity and inclusion within the profession. Unfortunately, the Bar Council's work has identified that issues for those with protected characteristics are not limited to selection for panels or entry into chambers or organisations but include access to work which in turn impacts career progression, remuneration and work satisfaction. It follows that in order to assess barriers as part of the GLD process that it would be helpful to adopt the same policy advocated for by the Bar Council of assessing how and why work is allocated to panel members.

- (c) Further to 19(b) above, **consider a fair allocation of panel work policy insofar as one does not exist already** and consider if that policy could be created further to the Public Sector Equality Duty set out in ss.149 to 157 of the Equality Act 2010 to address, as far as possible, any inequalities between those with protected characteristics and those that do not share those characteristics.

- (d) **Adapt the assessment criteria to ensure that it is more inclusive, particularly of employed practitioners and/or those Barristers that do not work in traditional sets of chambers or organisations.** In particular, adopting a broader definition of advocacy, a more inclusive format for the application form and a more contextualised approach when considering applications.

- (e) **Ensure those involved in recruiting are well-versed in the current make up of the Bar of England and Wales and the barriers that certain groups with one or more protected characteristics may face.** A thorough understanding of the institutions from which GLD is recruiting from and how *all* Barristers may currently practice is fundamental if one is to understand the barriers that different cohorts may face and how to ameliorate issues. For example, GLD's 13 May 2025 covering email seeking views for this project said that GLD wanted to work "*with representatives of the independent bar*". This terminology is not correct because *all* Barristers are independent, whether employed, self-employed or dual capacity, and this is reflected in Core Duty 4 of the BSB Code of Conduct applicable to all Barristers which provides as follows: "*You must maintain your independence*". The phrase '*Independent Bar*' is often used to describe self-employed practitioners in contrast to employed practitioners thereby implying that Employed Barristers are lacking in independence which is not accurate and often viewed as pejorative by some members of the Employed Bar. The current criteria used in panel selection is reflective of traditional 20th century chambers model as opposed to the modern 21st century Bar for the reasons set out above at C. Open dialogue between GLD and specialist bar associations and the Bar

Council about the nature of different Barristers' practices, as GLD is doing now with this project, may assist GLD in its endeavours as regards diversity and more generally.

- (f) **Consider a wider range of referees that can speak to an applicant's advocacy skills,**
(with advocacy to include non-traditional advocacy).

20. It is hoped that the above information is of assistance to GLD and the undersigned and BACFI more generally would be content to discuss the contents of this paper further and/or attend future meetings etc. as necessary.

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4 JULY 2025

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