Response to Bar Standards Board consultation by the South Eastern Circuit.

1. This is a response on behalf of the South Eastern Circuit ("SEC") to the Bar Standard Board's Consultation on the Proposed Amendments to the Equality Rules published September 2024.

Executive Summary

2. The South Eastern Circuit is the largest of the six geographical Circuits that make up the Bar of England and Wales and represents over 2,000 employed and self-employed members of the Bar with experience in all areas of practice. The South Eastern Circuit stretches from Canterbury and Lewes in the South to Norwich in the North and from Ipswich in the East to Reading and Oxford in the West. The Circuit is a representative, educational and social organisation.

3. This consultation response therefore reflects the experience and concerns of barristers in practice as professional users of the court system playing their own role in facilitating open justice whilst also ensuring that the legitimate intention of achieving open justice does not have the unwanted effect of interfering with or damaging the interests of justice. Members of Circuit include those who are in employed practice, but the majority of Circuit members are self employed barristers practicing within a Chambers setup. It is self employed barristers who practice in or from the SEC on whose behalf this response is submitted.

4. The SEC supports the BSB's aim described in the Consultation Document ("CD") to have a more diverse bar, and to ensure that those who come to the bar do not suffer from discrimination and are able to thrive and meet their full potential. We recognise that it is important that the culture of the bar ensures that equality, diversity and inclusion (EDI) are the focus of all involved in the legal system.

5. Whilst we support the aims the BSB seeks to achieve, our considered view is that the majority of the changes proposed by the BSB in the consultation document are not the best way to achieve the desired outcomes. We consider that it could in fact be detrimental to those they appear to us to be intended to assist. In particular the changes to CD8, the move to outcomes based judgment, the removal of the mandatory rules to have EDI officers in chambers and the scope of the proposals in relation to seeking to compel access for those with mobility impairments are ones with which (at least in their current form) we cannot agree.

6. A significant number of chambers – particularly at the publicly funded Bar – are run by members of the profession alongside their practice (rather than by staff). They employ the minimum number of staff required to run their business effectively. They are not profit making enterprises. The responsibility for (among many other things) EDI, lies therefore with individual barristers, not salaried staff or individuals with human resources training. Existing BSB regulations already impose heavy burdens upon such smaller chambers, and there is very grave concern that the proposed rule changes will impose significant further substantial burdens on practitioners in chambers. Whilst we do not contend that increasing the burden alone is a reason for desisting from necessary and proportionate changes, we do consider it imperative that the BSB understands the true burden of the proposed changes on individuals. The burden of compliance with the proposed changes will have a disproportionately severe impact on smaller chambers, and most likely on those the proposed changes

are intended to help. If the rules proposed were to be implemented it would require additional staffing, costs that Chambers cannot afford, and the demands placed on practitioners who run these sets would lead to the potential loss of the smaller sets which is an undesirable outcome as that will reduce access to the profession - the exact converse of what the changes hope to achieve.

7. The BSB indicated at a series of roundtable meetings in November 2023 that they were not seeking to regulate Chambers more or impose more upon Chambers time wise. This consultation goes behind those assurances. The consultation has not taken into account the financial cost to Chambers or considered who in fact will undertake the significant extra work and analysis that these changes will require. Being self- employed those who undertake the roles within Chambers do so for no remuneration, it cannot be expected they do not attend court in order to undertake the tasks proposed as that will reduce their income. If it is the view of the BSB that EDI roles are being foisted upon female / BME barristers, it must follow that it is these members whose income may be detrimentally impacted by ensuring compliance.

Evidence basis for proposals?

8. Much of the content of the CD appears anecdotal rather than evidence based. A proposal to abolish the EDO role absent any actual evidence about who currently occupies those posts is but one example.

Wording of questions

9. When responding to the consultation questions we found that the wording of the questions posed did not promote true discussion or feedback as to the content of the proposed rule changes nor did the questions appear to be a genuine set of questions seeking input from practitioners as to their views on the necessity or practicality of imposing the changes suggested. Rather than asking whether the changes might help improve EDI, how it might impact

various protected characteristic groups, and how practically the changes would impact practitioners, the questions appeared to seek approval for a decision that had already been made, leaving limited scope for proper discussion from those who will be directly affected by the rule changes.

Definitions

10. We also share the concerns expressed by the Bar Council about the lack of clarity in the language within the consultation document, for example between whether the duty is to be to "promote" or to "advance" EDI. Furthermore, the lack of definitions in various regards – for example "diversity" is expressly said in the consultation document to "include but not [be] limited to" the protected characteristics in the Equality Act 2010 ("EqA") and socio economic duty. Individual barristers are therefore to be regulated in relation to a duty to promote EDI on the basis of unknown and undefined characteristics. This is entirely unsatisfactory.

Competing interests

11. The BSB is reminded that amongst those with protected characteristics (as defined within the EqA), there are sometimes competing interests. There are for example a whole series of cases concerning Christians for whom providing services to LGBT people conflicted with their beliefs (by way of example only, in the Supreme Court the cases of Bull v Hall and Asher v Lees Baker). More recently, there have been cases, including involving chambers and barristers, about the protected characteristic of sex and gender and the Supreme Court will in late 2024 consider related issues in *For Womens Scotland Ltd and Scottish Ministers v The Lord Advocate.* Of course all parties (and intervenors) in that case are to be represented by self-employed barristers. An overarching requirement to "promote inclusion" could involve discriminating against

individuals with protected characteristics which competing characteristics. While the BSB has expressed the view that a positive CD8 is not supposed to impact on the cab rank rule, this is not, with respect, clear from the proposed wording. How is a barrister to "promote inclusion" of those with the protected characteristic of being gay when providing legal services, while representing an individual with the protected characteristic of a particular religion which considers homosexuality to be sinful such that they do not wish to offer goods or services to that category of people. Even if the positive obligation were only to apply to practice management rather than "while providing legal services" (as is stated in proposed CD8), how should a barrister respond in a situation where another member of chambers objects to sharing a single sex bathroom with a person who is not cisgender? Or a client so objects? What is the positive obligation on that barrister? What of the use of gender-neutral language on websites? Would all members of chambers be responsible if objection was taken by one group or another to the use or failure to use such language? And if an individual barrister or indeed a set of chambers takes a particular approach to certain issues we consider there is a risk that bar could be brought into disrepute as not being seen to be independent.

Question 1: Do you agree with the new positive Core Duty (CD8) (and consequential amendments), which goes beyond the duty not to discriminate unlawfully?

12. No. We have a number of concerns about the proposed new positive Core Duty 8.

13. Having read the CD in some detail, we remain unclear about what it actually requires a barrister to do. Imposing a positive duty on a barrister requires as a minimum that they must be able to understand what is expected of them and how it will work.

14. The BSB have failed to adequately define the meaning of key terms, especially 'inclusion' 'advancing' and 'promoting'. The open ended nature of the term "diversity" is unsatisfactory.

15. The CD is not even clear about to whom it actually applies and in what areas (see our response to Question 5 below).

16. If this positive duty is at its heart unclear in its operation, it could not be effectively enforced. If it cannot be effectively enforced, it could not achieve its stated objectives.

17. An obligation to take reasonable steps to promote an 'inclusive culture' (as per CD §5d and §27) is also undesirable and unworkable – for example given wholly opposed ideologies which currently exist in respect of sex-based rights.

18. There is room for legitimate and substantial disagreement in the area of sex-based rights. Assuming, as we do, that both sides are entitled to Equality Act protection in respect of those views, a duty to promote an inclusive culture in that area would be unenforceable and divisive. If enforcement would itself be in breach of the Equality Act, imposing such an obligation would be nonsensical. There could be no effective or fair enforcement of an obligation to promote an ideology when there is fundamental and legitimate disagreement about that very ideology.

19. The change proposed to Core Duty 8 has the very real potential to result in protracted disputes between the BSB and individual barristers. The proposed change and the content of the CD has the very real potential to alienate individual members of the Bar. That may well serve to damage EDI rather than promote it. There is also a risk that a positive CD8 may undermine public confidence in the independence of the profession.

20. The BSB has no doubt heard the predominantly negative reaction to the CD from the Bar, even from many committed to EDI. This should not be lightly dismissed.

Question 2: Are there examples of conduct, both within and outside of a barrister's practice, that should be prohibited but are not captured by this duty?

21. No

Question 3: Is our approach to the proposed Core Duty appropriate for those at the Employed Bar?

22. That is best addressed by those at the employed Bar and the Bar Council but many of our objections under Question 1 apply equally to the Employed Bar

Question 4: Do you agree that the Equality Rules should take an outcomes-based approach, supported by prescriptive requirements that enable barristers to meet the outcomes?

23. No. Such an approach is unworkable in practice. It will be impossible to make any meaningful assessment of whether a person has taken 'reasonable steps' based upon the proposed outcomes. The promotion of equality and diversity is not a simple maths problem. There are many variables inherent in the make-up of a Chambers and it will be impossible to use a simple yardstick of an 'outcomes' assessment. Any attempt to measure 'outcomes' will simply become bogged down in legitimate controversy. That controversy will ultimately do damage to the equality and diversity ideals. In addition, the proposal requires Chambers to undertake considerable data collection and analysis. No consideration is given to the practical and legal reality of such data collection. The technology employed by many sets does not permit such data to be easily collectable. Many chambers already bear a considerable burden in respect of data collection – for some sets (especially those who operate in predominantly

publicly funded work) bearing an even broader obligation will prove impossible. Those further obligations will fall far short of providing comprehensive (and therefore useful data) is further underlined by the acceptance at CD§52 that members of chambers could not be compelled to provide such data in any event. The BSB would be placing yet further burdens on Chambers but with no real prospect that this further work would actually promote EDI or result in effective enforcement action.

Question 5: Have we identified the correct priority areas (recruitment, retention, and progression)?

24. Yes. However, the way in which the proposed change is drafted goes far beyond those areas. §3a of the CD clearly states that the amended duty will apply to all barristers 'when practising or otherwise providing legal services'. The CD at §31 specifically states that an individual barrister must demonstrate the appropriate commitment 'through their practice'.

25. If, as per recent announcements by the BSB suggest, this duty is actually meant to apply only to the operation of Chambers or practice management (whatever that means) it ought to explicitly say so.

26. If it is really only a Chambers obligation, how could that practically be enforced against an individual barrister?

27. The new core duty as currently drafted goes way beyond improving Chambers procedures. It suggests the extension of the duty to a barrister's case work. That would be wholly inappropriate in an adversarial system where every barrister is subject to other core duties especially Core Duty 2 ['you must act in the best interests of each client'].

Question 6: Are there any further outcomes we should seek to achieve through the Equality Rules?

28. No – see above re outcomes.

Question 7(a) Do you agree with the list of required policies in recommendation 3?

29. We agree that all Chambers should have polices A-E in force. In fact, Chambers are required to have such policies in place currently.

30. We do not agree with a policy for allocation of unassigned work. Whilst a policy in respect of the allocation of unassigned work appears an attractive proposition, there is an inherent difficulty with effecting such a policy so to benefit the groups the policy is trying to protect (particularly in criminal practice) and in executing the policy within the Chambers system. It also fails to address what maybe a fundamental issue which is the fair distribution of work as a whole.

31. Taking each in turn – first, such a policy could easily be applied too 'strictly' to the disadvantage of minority groups. For example, cases are not all 'equal'. What provisions must be covered within a policy for fairness to be achieved? There are differences in privately funded cases as to how well the case is paid, where the case is, how high profile a client might be, how long a case lasts (if legally aided). Should a female member of Chambers with a 1 week sex case loose out on being put forward for an 8 week drugs case because they have already been put forward for the requisite amount of unallocated work or they have a 1 week booking which by strict application of any policy would mean they could not be considered for the 8 week case? There would have to be great flexibility in any policy on this area which would in fact make it overly complex. That no guidance is going to be given in relation to the content of such a policy from the BSB when there could be regulatory action as a consequence

of its contents or application is not appropriate and leaves room for the problem to be perpetuated yet under the guise of a BSB compliant policy.

32. The monitoring of assignment of unallocated work should already be carried out as part of the role of the EDO. This should therefore mean that no written policy is required. It is the monitoring of the assignment of work that should be effective in achieving EDI targets, not the application of a vague and unworkable policy. Members of Chambers having awareness of their entitlement to access their own 'opportunity analysis' re: allocation of unassigned work log/opportunity analysis will also be of benefit.

Question 7 (b) Do you agree that a non-prescriptive approach to the required policies will result in a more reflective and meaningful approach?

33. No. It cannot be right that Chambers are required to implement polices which have regulatory consequences for individual members but that there is no guidance given from the Regulator as to what to include in those policies.

34. Chambers are not run as businesses in the commercial world, there are no HR departments or large administrative teams, for the majority of chambers there are only practitioners and a clerking team. The demands that would be placed by this non-prescriptive approach would be substantial and disproportionate.

35. If there is to be regulatory action as a consequence then there must be more meaningful and specified requirements by the BSB and it should continue to provide templates.

36. All current policies of a Chambers must be available to members that is good practice and in our experience followed by the majority of Chambers.

Question 7(c) How can we ensure that this approach is appropriately targeted to the needs of different practice ?(Recommendation 4)

37. We do not believe a non-prescriptive approach is appropriate and so we are unable to answer this question which is predicated on the answer to (b) being 'yes'.

38. If the regulations were clear and a framework provided to assist compliance then there should not be problems arising for different practice areas. They of course would have to be adapted by Chambers to reflect the size and scale of the different practice areas.

Question 8 :Will the requirements on monitoring and data analysis provide sufficient transparency for individual barristers to hold their chambers or entity to account? (recommendation 5)

39. We observe that Chambers are already required to carry out diversity data surveys every 3 years for members and staff. We do not believe that any change to this requirement will have any real benefit in terms of transparency EDI. In short therefore no. The BSB also seems to overlook the fact that barristers albeit in Chambers together are in competition with one another and therefore certain information becomes even more sensitive in that context and could not be distributed.

40. Distribution of the data is different to collection and analysis of such data. It is analysis that is important where practical.

41. This is an example of a question that does not adequately encourage discussion as to the appropriateness of this proposed rule change or the extent of the work that will be required to comply with it.

42. We make the following observations:

- Whether a person supplies such information is voluntary and will continue to be (nobody can be forced to provide their personal data). Therefore any analysis that is based upon this data is never a true reflection of Chambers. It would be unfair to require publication (internally or externally) of data that is not an accurate reflection of Chambers.

- Collection of the data annually could take place but we do not understand how this would achieve anything further than collecting the data every three years. There is significant movement within Chambers and a yearly collection is likely to fluctuate significantly rather than show trends within the data. This recommendation has no regard to the impact upon Chambers and how it would be achieved and who is expected to undertake such analysis. As iterated above, this often falls to individual members in criminal sets, especially smaller sets, and will impose a disproportionate burden on barristers.

- Pupillage applications - the EDI information can be analysed with relative ease as it is supplied within the pupillage gateway system if used, however applications to be tenants in many Chambers do not collect EDI data and this information may not be available. Again, it also cannot be forcibly obtained and would have to be done with consent which may not be given.

- The publishing of diversity data and distribution/allocation of unassigned work internally is an extremely divisive issue. It would cause tensions became self-employed individuals and may even have an adverse effect on the very members these policies are aimed at protecting. It would almost always be possible to identify who the data relates to which would create issues amongst members, could actively cause discrimination against minority members, and

would breach GDPR/confidentiality laws (especially as regards complaints and diversity data).

There are many elements that impact upon why a member of chambers received work which will never be understood from statistics. It will not encourage cohesion within a group. A person's earnings are private financial information that should not be shared internally without consent of the members concerned. It is unlikely all in a Chambers would consent and so again the data would not be reflective of the true position. It should be remembered that all members are in effect in competition and therefore an open approach should not be enforced with regulatory consequences – to suggest this is feasible represents a fundamental misunderstanding of how barristers and Chambers operate.

- The recommendation includes the requirement to publish complaints of bullying, harassment and victimisation within the Chambers. It is inconceivable that this is being considered as a proposal. Chambers are relatively small organisations - this might mean that those subject to such behaviour will not report any behaviour they are subject too knowing that it may become widespread knowledge especially in small sets when even anonymised it will be obvious who the parties are concerned. It might lead to victimisation of those who complain or in fact those that are the subject of a complaint. These are very sensitive issues which are dealt with confidentially and in line with strict procedures within Chambers.

- Workforce feedback – this presupposes that this data should be collected without any guidance on how this should be done. There again is no proposal on how this is monitored or judged by Chambers and again will lead to the identification of those who provide the feedback.

- It is beyond our comprehension how publishing complaints from clients will play any role in furthering EDI. What is the purpose of this? This information should

not be shared internally as it is private, could lead to regulatory repercussions, and particularly at the criminal Bar many complaints are made that are not upheld due to the nature of the work undertaken and the clientele. In addition, in order for the statistics to be meaningful you would need to collate the protected characteristics of every client of the member concerned to see if there is any issue that arises based on EDI. If incomplete information was collated (which we think highly likely), this would not provide the picture that the BSB seek. It would be inherently unreliable. In addition over what period in order that a true picture is obtained to be of any value.

- Chambers are businesses. Each practitioner is self-employed. This proposal fails to engage with the nature of being self-employed on a practicable or realistic level.

Question 9:_Should the data collection requirements include characteristics beyond those currently protected and socio-economic background? If so, which additional characters should be considered and why? Recommendation 5

43. This question assumes that socio-economic background will be included. Should the question not in fact be: 'should the data collection be extended beyond those currently included'?

44. The term 'socio-economic background' would require particularisation by the BSB before this information could be collected.

45. The breadth of this factor would need to be considered before it could be included. For example, does it cover issues that prevent access to the Bar such as candidates / barristers with neurodivergence or caring responsibilities? Does the BSB propose this is based on school attended, private or state school, whether this was as a result of a full scholarship, is it based on parents' employment, free school meals?

46. We therefore cannot agree that socio-economic status should be considered, let alone any factors beyond this factor. The collected data should be limited to protected characteristics as defined by Parliament.

47. If too much data is collected, it will be impossible to distinguish legitimate choice based on skill from any perceived discrimination.

Question 10: Do you agree with our proposed requirements on publishing equalities monitoring data? Please explain your answer (Recommendation 5)

48. No, the requirements should remain the same for all the reasons given in the answer to question 8. Publishing diversity data, complaints, and other data does nothing to increase access to the profession. It could in fact further the problem depending on what a client is seeking to gain from accessing the information.

Question 11: Do you agree that clearer links between action plans and data will lead to more effective implementation of equality measures? What additional steps could enhance this linkage?

49. Each Chambers should have an action plan in place in compliance with the current rules, which is reviewed regularly, this inevitably is determined by the use of the data a chambers may obtain as part of its collection. If review of an action plan were to be annual then in fact it may not be reflective where work is concerned as one substantial case can distort the statistics, which is why a wider period should remain to ensure trends in progress can be adequately monitored.

50. Of course the impact of how many members are prepared to share their data will impact any analysis.

51. The action plan should be linked to the policies A-E in Recommendation 3 but that should be done in any event such that this is an unnecessary recommendation.

52. Allocation of unassigned work should not be included in the action plan in detail. The reviewing and monitoring of the logs should be included as part of the requirements on action plans currently existing.

Question 12: Do you agree with the proposal to remove the prescriptive requirement to undertake training on 'fair recruitment'?

53. No. As pointed out by the Bar Council, neither the BPTC nor pupillage teach barristers the matters which are included in fair recruitment training. The present system under which those involved in recruitment at the bar (either for pupillage, tenancy or employees of chambers) must undertake fair recruitment training is well understood and complied with.

54. There is a risk that if the compulsion is removed, those individuals who are most likely to benefit from the training are least likely to undertake it.

Question 13: Will the proposal to replace prescriptive training with a more reflective approach lead to more purposeful CPD activities to build the skills required to meet the Equality Outcomes? (Recommendation 8)

55. No. Most fundamentally we share the concerns expressed by the Bar Council about the shift to regulating the profession on the basis of “equality outcomes”, and are unclear as to whether the “reflective approach” is an

expectation only of self reflection.

Question 14: Do you agree with our proposals in relation to the conduct of an accessibility audit and publication requirements? (Recommendation 9)

56. The SEC very much wants to see any barriers encountered by disabled barristers / clients to be minimised. However, physical disabilities and ensuring for example wheelchair access to chambers is only one aspect to be considered when looking at obligations under the Equality Act 2010 to make reasonable adjustments. And even when considering those with physical disabilities, access to chambers is only one part of what need to be considered for a barrister in practice – access to courts / cells and other venues is also of the upmost importance to a barrister seeking to build and grow a practice.

57. Accessibility audits – proportionate to the size and resources available to chambers – are not objected to, and the Bar Council provide guidance on this. However, the impact on individuals from disabilities are myriad and it is appropriate that they are considered on an individual basis in accordance with the legislative framework under the Equality Act.

Question 15: Do you agree with our proposed requirements to improve access to premises of chambers and entities for disabled people? Please explain your answer. (Recommendation 10)

Question 16: Is the requirement, set out in Recommendation 10, a proportionate means of achieving the equality outcomes of the 'General Equality Rules'? Please explain your answer.

58. We answer questions 15 and 16 together below, and do not agree with the

BSB's proposal.

59. As set out above, mobility impairments are only one way in which a disability may impact a person, and access to chambers premises is only one place it is necessary to be able to get to, courts being the most obvious other.

60. We are also concerned that the cut-off date of five years which may or may not fit with leases chambers have entered into.

61. The legal framework as set out under the Equality Act 2010 as described in the response of the Bar Council demonstrates why the statutory obligations are appropriate, and it is entirely disproportionate to seek to impose more onerous obligations on barristers.

62. We agree with the submission of the Bar Council that the legal test for reasonable adjustments should be applied, i.e. (a) effectiveness; (b) practicability; (c) resources including cost. We believe this is a proportionate test and consistent with a chambers' legal obligations under the Equality Act. The regulator should not impose a higher threshold and that should be made clear in the regulations and regulatory guidance.

Question 17; Do you agree with the proposal to remove the mandatory requirement to appoint EDO and DDO? If so how could chambers and entitles manage these responsibilities moving forward?

63. No. It is absolutely essential that these key roles remain as a mandatory requirement. Without them Chambers would have no key persons responsible for undertaking/leading a team for all the work that they do in the area of EDI. If the roles are removed then the work they undertake is bound, eventually, to be overlooked and not be given the current focus that it presently enjoys.

64. An EDO is the only confidential recourse that junior members may feel that they have to their voices being heard on sensitive matters including the allocation of work. Without an EDO they may end up having a difficult and strained relationship with their clerks if they have to raise matters directly or worse not raise issues at all. An EDO deals with very sensitive matters in many matters in Chambers and affords members a confidential route to raise ED matters and that should not be removed.

65. It is clear that the concern is who are allocated as the EDO and DDO, that should not lead to the removal of the role. The BSB and Bar Council are both notified of who are appointed to those positions and both authorities could advise Chambers as to their choice of officers. The BSB could mandate that there are at least 2 EDO's per chambers. That at least one of the EDO's is held by a senior junior or silk or management take on this role that would then leave it open for junior members to become involved if they wished too. It is not the experience of the SEC that junior members are targeted to undertake the role as the consultation suggests. They ought not however to be excluded.

66. Whilst the BSB's response in roundtable meetings, that chambers might still elect to have EDOs if they so wish, it is most likely the chambers most in need of considering EDI issues more carefully who will elect not to have such officers. Further, the mandatory nature of this post in practice gives it enhanced standing within chambers.

Question 18: Do the prescriptive requirements within the rules:

Question 18 (a): enable barristers to take a reflective approach to achieving the equality outcomes?

67. We do not consider that a "reflective" – presumably self reflective – approach to be applied to every single individual barrister is appropriate or proportionate.

Barristers need to know what specifically they are obliged to do in order to be compliant with their professional obligations. This does not enable that.

Question 18(b): ensure specific, measurable and timely action is taken to address disparities?

68. We agree with the Bar Council that we do not think the proposals as currently drafted will create a context for specific, measurable or timely action.

Question 19: Is there sufficient clarity on what is expected under our new proposals from:

Question 19(a): barristers within chambers and entities?

69. No. Again we agree with the Bar Council that much remains wholly unclear, such that barristers cannot know with confidence what is minimally required of them. As set out above, we also seek to highlight that the majority of barristers are in chambers which do not have HR support from staff, and if the EDI officer role is no longer mandatory, it is unclear who will be ensuring compliance within chambers, and of course each individual barrister may be liable to regulatory action.

Question 19(b): sole practitioners and 19 (c) employed barristers?

70. We would support a proportionate approach to sole practitioners. We do not reply on behalf of employed barristers.

Question 20: Are any of the requirements on sole practitioners disproportionate?

71. We have nothing to add to the Bar Council's response to this question, with which we agree.

Question 21: Are our proposals to improve disability access proportionate? Please explain your answer.

72. As set out above, much of the court estate, including court rooms, cells and robing rooms, remain inaccessible. This cannot be ameliorated by the use of video conferencing / or remote working in the way that an inability to access chambers – or part thereof – can be.

73. Furthermore, these proposals seem to concentrate only on physical disabilities manifesting themselves in terms of access problems; this might inadvertently prevent further and appropriate consideration of disabilities which do not impact on mobility, including of course mental impairments.

Question 22: Do you foresee any specific problems that barristers, chambers or entities might face in complying with these proposed rules? How might these problems be mitigated?

74. Yes.

75. It is imperative that regulatory standards are clear so that barristers know what is expected of them and in what circumstances they could face disciplinary action. These basic minimum standards are not apparent in this CD. We agree with the Bar Council that some proposals will be difficult to comply with and others will be difficult to enforce. They will not ultimately lead to the outcomes we all want and may diminish public confidence in the profession.

Question 23: How can we effectively gather and incorporate feedback from those affected by the new rules to ensure continuous improvement? What mechanisms should be in place to evaluate the effectiveness of the new rules in achieving their intended outcomes?

76. It is somewhat ironic that the most obvious people from whom meaningful feedback as improvement in equality outcomes could be gathered are EDOs – whom it is proposed to abolish (at least as a mandatory office). Changes should only be made on the basis of sound evidence and the changes proposed should not be implemented.

Conclusion

77. The Circuit suggests that, before incautiously progressing with any of the proposed changes, the Bar Standards Board looks again at whether such changes are in anyone's best interests.

Leon Kazakos KC – Circuit Leader

Rebecca Tuck KC – Chair Circuit EDI Committee

Claire Davies KC

Allison Clare KC