

BSB Equality Analysis (EA) Screening Form

For EIA's **the term 'policy' is shorthand**. Policy needs to be understood broadly to embrace the full range of our: Policies, Frameworks, Strategies/Business Plans, strategic Activities and Decisions etc.

Whether it is formally written down or whether it is an informal custom or working practices you must conduct an initial EIA. This includes new policies under development and, if relevant, can include your existing policies.

The BSB is responsible for making a wide range of strategic and operational decisions. This spans decisions about BSB policies and strategies, budget setting and service redesign right through to everyday decisions that affect individuals.

Equality Impact Analysis is a way of considering the effect of these decisions on our staff, those who work in our sector, consumers and the wider public, who belong to different protected and/or discriminated groups.

Please approach the BSB Equality and Access to Justice Team and/or read the Guidance for BSB Staff on

Date of Assessment	November 2016.
Assessor Name & Job Title	Joseph Bailey (Senior Policy Officer).
Name of Policy/Function to be Assessed	Public and Licensed Access review recommendations.
Aim/Purpose of Policy	<p>The Public and Licensed Access review recommendations are as follows:</p> <p><u><i>Cab-Rank Rule</i></u></p> <p>It is recommended that the BSB assesses from first principles whether the cab-rank rule should apply to Public Access cases, undertaking a full analysis against the regulatory objectives in the LSA. This should focus in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers.</p> <p><u><i>Guidance for Barristers, Clerks and Lay Clients</i></u></p> <p>It is recommended that the BSB reviews its Public Access Guidance for Barristers and Clerks, redrafts as necessary and then tests the guidance to ensure it is fit for purpose. It should then be published and promoted through all of the usual channels.</p> <p>It is also recommended that the BSB reviews its Public Access Guidance for Lay Clients guidance in light of its now larger evidence-base and any further evidence emerging from the CMA, redrafts as necessary and then tests the guidance to ensure it remains fit for purpose. The BSB should explore whether to make provision of the guidance to lay clients</p>

mandatory for barristers. This could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters and reduce the need for frequent communication between barristers and clients.

Guidance on Conducting Litigation

It is recommended that the BSB reviews its position on which tasks constitute conducting litigation, drafts standalone Guidance on Conducting Litigation and then tests the guidance to ensure it is fit for purpose. It should then be tested and promoted through all of the usual channels.

Model Client Care Letters

It is recommended that the BSB reviews its Public Access Model Client Care Letters in light of its evidence-base, redrafts as necessary and then tests the letters to ensure they are fit for purpose. Making provision of the guidance to lay clients mandatory for barristers could also reduce the amount of information which needs to be included in client care letters and therefore, reduce the length of the Public Access Model Client Care Letters.

It is also recommended that in reviewing its Public Access Model Client Care Letters, the BSB draws on the best practice it has identified in providing clarity and transparency on fees, and managing clients' expectations. The BSB should also draw on other best practice in this area. This should help clients to understand how the fees they are charged are calculated, what is required of them and what sort of contact with barristers they can expect. Subject to the forthcoming recommendations of the CMA, we would also anticipate considering rules that would promote greater transparency in costs before clients have engaged a barrister.

Public Access Officer and Training for Clerks and Administrators

It is recommended that the BSB explores whether chambers with more than one Public Access barrister should be required to appoint a Public Access Officer. Their role would be to lead on Public Access issues in chambers – particularly the administration of such work – and make themselves available to give advice and discuss any problems. The Public Access Officer could either be a barrister, or a clerk or administrator.

It is also recommended that the BSB encourages Public Access clerks and administrators to attend relevant training courses as a matter of good practice. These could include, but not be limited to, the Bar Council's Public Access training course for clerks. If the BSB does require chambers with more than one Public Access barrister to appoint a Public Access Officer, they should also be trained for the role. In the case of a barrister they could attend a Public Access training course, and in the case of a clerk or administrator they could attend another relevant training course.

Public Access Rules

It is recommended that the BSB redrafts the Public Access Rules in the more outcomes-focused manner of the rest of the BSB Handbook, and explores whether to replace the requirement for barristers who are of less than three years' standing to maintain a Public Access log with a more effective and proportionate means of seeking and reflecting on client feedback.

Public Access Training

It is recommended that the BSB undertakes further assessment of how well the current Public Access training course meets the required outcomes, and how well the training is being delivered in the areas which barristers have identified for improvement. These assessments should be used to produce a revised set of required outcomes, which may not differ substantially from the current outcomes, but may lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement). It is also recommended that the revised outcomes align a) with the BSB's Professional Statement, which describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice, and b) with the BSB's Future Bar Training programme more widely. This seeks to make education and training for the Bar more consistent, innovative and flexible, while also removing unnecessary barriers.

Licensed Access – Recommended Options

The main findings from both the barristers' and clients' survey are that the Licensed Access scheme is generally working well, and there are no significant issues with the way in which the scheme operates. The surveys also showed that there continues to be regulatory value in Licensed Access as a niche scheme which is distinct from Public Access. However, there do appear to be a number of ways in which the Licensed Access scheme could be made more outcomes-focused in line with the BSB's wider regulatory approach.

It is therefore recommended that the Licensed Access scheme is retained largely in its current form, with only the following changes being made:

Licensed Access Rules and Recognition Regulations

It is recommended that the BSB redrafts the Licensed Access Rules and Recognition Regulations in the more outcomes-focused manner of the rest of the BSB Handbook. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations. We will explore, amongst other things, whether the Schedules should be moved to guidance.

Limitations and Conditions

It is recommended that members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations should be permitted to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal. This would be in keeping with redrafting the Licensed Access Recognition Regulations to reflect the more outcomes-focused manner of the rest of the BSB Handbook.

It is also recommended that the BSB explores whether the whole system for individual approval of licences continues to be necessary and/or whether it could be made more proportionate.

Scope of Practice Rules

It is recommended that the BSB explores whether in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). However, if this is an amendment which should be made in principle, it may be best made as part of a wider review of the Scope of Practice Rules (rather than under the auspices of the Public and Licensed Access review).

Terms of Work

The Licensed Access Terms of Work are published by the Bar Council in their representative capacity. It is therefore recommended that the BSB removes reference to the Licensed Access Terms of Work from the Licensed Access Rules and Recognition Regulations and, via the protocol for ensuring regulatory independence, requests that the Bar Council update the terms.

1. Do you consider the policy to have an adverse equality impact on any of these groups? Write either 'yes' or 'no' next to the appropriate group(s).

Race/Ethnicity	No	Sexual Orientation	No	Marriage/Civil Partnership (only in employment matters)	No
Gender (including gender identity)	No	Religion/Belief	No	Carers	No
Disability/Mental Health	No	Gender Reassignment	No	Socio Economic Status	No
Age	No	Pregnancy/Maternity	No		

2. If you answered 'yes' to any of the above, give your reasons why.

N/A.

3. If you answered 'no' to any of the above, give your reasons why.

It is not considered that the Public and Licensed Access Review recommendations will have an adverse equality impact on any of the above groups. It is also considered that the review will help to promote equality of opportunity, foster good relations between different groups and embed the equality and access to justice agenda at the BSB in the following ways:

- The Equality and Access to Justice Team will be engaged throughout the implementation of the recommendations, providing assurance that proper regard is given to equality and access to justice issues;
- The BSB will assess from first principles whether the cab-rank rule should apply to Public Access cases, focusing in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers;
- When the BSB's Public Access guidance documents and model client care letters are reviewed to ensure that they are fit for purpose, work will be undertaken to ensure that they are written in plain English, improve clients' understanding of the Public Access scheme, manage their expectations and provide clarity and transparency on fees. This will help to promote access to justice;
- It is recommended that members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations should be permitted to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal. This will also help to promote access to justice; and
- The new Public Access training regime will be assessed specifically in terms of how effectively it has embedded equality and access to justice considerations. Training providers must put in place arrangements to monitor and address equality and diversity issues. The Equality Champion for the Regulatory Assurance Department will be lending their expertise to this assessment.