

## Equality Analysis (EA) template

Date of Assessment	March 2013
Assessor Name & Job Title	David Christopher, Senior Policy Officer
Name of Policy/Function to be Assessed	Enforcement Strategy
Aim/Purpose of Policy	<p>The purpose of the enforcement strategy is to set out, at a high level, how the BSB will seek to address non-compliance with its regulatory arrangements through the application of sanctions. The strategy builds on the enforcement rule changes and proposals that have been consulted on and developed within the new Handbook. The new enforcement rules are themselves essentially a development and broadening of existing rules and procedures to include BSB regulated entities. In addition, administrative sanctions will be applied more broadly to any breach of the Handbook. Although sanctions may be applied to entities, typically action will be taken at an individual level and applied to those who own, manage or work for a BSB-regulated entity.</p> <p>The strategy identifies the outcomes that the BSB is seeking to achieve through the application of sanctions:</p> <ul style="list-style-type: none"> <li>• promoting adherence to the regulatory objectives and our regulatory arrangements;</li> <li>• deterring non-compliance;</li> <li>• preventing further breaches; and</li> <li>• preventing those who represent a serious risk to the public from practising.</li> </ul> <p>The strategy sets out the hallmarks of the BSB’s approach ie it will be risk-based, flexible, fair and open, outcomes-focussed and apply proportionate measures to identified breaches of the Handbook.it also identifies the factors that will be considered when determining what enforcement tools, if any, should be applied, and summarises the enforcement tools and sanctions at our disposal. The factors we will consider include, but not limited to:</p> <ol style="list-style-type: none"> <li>a. the risk posed to, or the impact on, one or more of the regulatory objectives;</li> <li>b. whether any of the outcomes in our Code of Conduct have been breached;</li> <li>c. the seriousness and complexity of any potential breach;</li> <li>d. whether the breach is an isolated incident of part of a pattern of repeated breaches;</li> <li>e. whether the breach, if proved, would amount to a criminal offence;</li> <li>f. the impact of the act or omission taking into account the our</li> </ol>

	<p>regulatory priorities as stated from time to time;</p> <ol style="list-style-type: none"> <li>g. the impact on clients if we take action compared with the impact of not taking action;</li> <li>h. the impact on public confidence in the profession and the administration of justice;</li> <li>i. the period of time over which the act or omission took place;</li> <li>j. the number of clients affected and the seriousness of the adverse impact (or potential adverse impact) on those clients (particularly if the clients are vulnerable);</li> <li>k. evidence or a record of insufficient care being taken over compliance or of recklessness, deliberate breaches, or dishonest behaviour;</li> <li>l. whether the regulated person self-reported and has taken, or intends to take, steps to correct the breach and to provide appropriate redress; and/or</li> <li>m. whether the resources required are disproportionate to the likely sanction.</li> </ol> <p>If this strategy is successfully implemented, breaches of our regulatory regime should be addressed in an open, proportionate and risk-based manner allowing us to promote compliance with our regulations. The profession and consumers will benefit from the measures taken to address non-compliance with the requirements sets out in the Handbook</p> <p>The application of the strategy is intended to be fair and equitable and should not disadvantage any individual because of their age, disability, gender reassignment, marital/civil partnership status, pregnancy and maternity, race, religion or faith, sex or sexual orientation.</p> <p><u>Related policy areas</u></p> <p>The strategy may have an impact on the number of individuals or entities that are referred to the Supervision Department for supervision and monitoring. The criteria that will be used for this purposes are as follows:</p> <ul style="list-style-type: none"> <li>• the seriousness and nature of the non-compliance identified;</li> <li>• whether the matter can be addressed through supervision without the application of sanctions; and</li> <li>• whether applying supervision tools will be a proportionate response to the non-compliance identified.</li> </ul>
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## 1. Evidence

What evidence will you use to assess impact on equality?

The main sources of evidence use to assess the equality impact are outlined below:

- Biennial Survey 2011
- 2010 research from Sheffield University
- In house data and research in relation to barristers subject to complaints under our current procedures.

Once this strategy is operational information will be collected on the protected characteristics of individuals who:

- a) have a complaint made against them;
- b) have a sanction imposed upon them: and
- c) are referred to PCD by the Supervision Department;

Analysis of this data will allow us to ascertain whether individuals with particular protected characteristics are disproportionately represented in any of these categories and whether the strategy is operating in a fair and equitable manner.

## 2. Impact on Equality

Consider whether the evidence listed above shows the potential for differential impact, either adverse or positive, for different groups. If there are negative impacts, explain how you will attempt to mitigate these. Mitigating actions can be described in more detail in your Action Plan (Section 4).

### Referrals to the PCD

The PCD has no influence over the complaints or matters referred to it for consideration for the application of enforcement tools (including matters referred by the Supervision Department). However, the protected characteristics of those referred will be monitored and a separate Equality Analysis has been developed for the Supervision Strategy. Any apparent anomalies, eg the over-representation of individuals with particular characteristics, will be investigated to try and identify reasons and any actions that can be taken to address them. Where appropriate, discussions and action will be undertaken with the Supervision Department.

### Indirect discrimination

In design, the strategy is not discriminatory and, once operational, it will be monitored closely for signs of indirect discrimination. Decisions will be made on the basis of identified objective criteria. Other criteria, such as protected characteristics, should play no role in process, other than to inform adaptations to processes (eg dates and locations of hearings), or materials (eg the form and format in which information is communicated) to meet the particular needs of individuals. The strategy will be underpinned by detailed policies and procedural documentation, which decision makers will be trained in the use of to ensure that the strategy is applied fairly and equitably.

However, the enforcement tools which relate to the strategy are themselves developments of

<p>existing tools and, as already indicated, research into the diversity of barristers subject to existing complaints procedures shows that black and minority ethnic barristers are over-represented in the BSB's complaints processes. Externally commissioned research is currently being carried out into whether the current processes indicate any areas of unconscious bias which may be creating the over-representation. The outcomes of the research, due in May 2013, will be fed into this assessment. It is possible that individuals with particular protected characteristics could be disproportionately represented amongst those whom:</p> <ul style="list-style-type: none"> <li>a) are the subject of a complaint;</li> <li>b) are referred to PCD by the Supervision Department; and/or</li> <li>c) have sanctions imposed upon them.</li> </ul>	
Race	<p>According to research carried out by Sheffield University (2010), Black and Asian barristers appear more likely to be sole practitioners than White Barristers. Non-British barristers also appear more likely to be in sole practice or in smaller chambers than White barristers. Sole practitioners have fewer resources available to them than large chambers, particularly time resources.</p> <p>Data collected on the diversity of barristers subject to complaints under our current procedures shows that black and minority ethnic (BME) barristers are over represented in the BSB's complaints process. However, research is being conducted in relation to this which may highlight changes that should be made to the new strategy to ensure that it can be applied fairly and equitably. This is an area that will need to be monitored closely once the strategy is implemented and, if any discrimination is identified, it will be reviewed.</p>
Gender	<p>The Biennial survey showed that more women are employed in criminal and family law and therefore over represented in publicly funded chambers, which may have fewer resources than other Chambers to support compliance with practising requirements.</p> <p>Once the strategy is operational this area will be monitored and, if any discrimination is identified, the strategy will be reviewed.</p>
Disability	<p>Research by Sheffield University and the Biennial survey show that barristers with a long term health problem or disability are proportionately more likely to be sole practitioners. Sole practitioners do not have the support of a chambers infrastructure to assist with ensuring compliance with practising requirements.</p> <p>However, if individuals with disabilities are required to attending hearings, for example, provision may need to be made to provide additional support and reasonable adjustments to facilitate their attendance and participation in such events.</p> <p>Once the strategy is operational, if any discrimination is identified, it will be reviewed.</p>

Age	<p>If the application of enforcement tools impose requirements that are unsuitable for an individual due their age (e.g. an elderly barrister who is unable to communicate about dates for a hearing via email), alternative arrangements will be made.</p> <p>Once the policy is operational, if any discrimination is identified, it will be reviewed.</p>
Sexual Orientation	<p>There is no evidence to suggest an impact on this protected group.</p> <p>Once the policy is operational, if any discrimination is identified, it will be reviewed</p>
Religion/Belief	<p>If the application of enforcement tools imposes unsuitable requirements on an individual due their religion (e.g. a hearing is scheduled during a religious festival, event or prayer times), alternative arrangements will be made.</p> <p>Once the policy is operational, if any discrimination is identified, it will be reviewed.</p>
Gender Reassignment	<p>There is no evidence to suggest an impact on this protected group. It will be the practise of the PCD to keep all diversity data private.</p> <p>Once the policy is operational, if any discrimination is identified, it will be reviewed.</p>
Pregnancy/ Maternity	<p>If the application of enforcement tools imposes unsuitable requirements on an individual an individual who is pregnant or on (or returning from) maternity leave, alternative arrangement will be made (eg rescheduling a hearing date).</p> <p>Once the strategy is operational, if any discrimination is identified, it will be reviewed.</p>
Marriage and Civil Partnership	<p>Once the strategy is operational, if any discrimination is identified, it will be reviewed.</p>
Other Identified Groups	<p>Once the strategy is operational, if any discrimination is identified, it will be reviewed.</p>

How does the policy advance equality of opportunity?
<p>Although this strategy is not specifically designed to advance equality of opportunity, any individual to whom an enforcement tool and/or sanction is applied, regardless of their protected characteristics, will be treated fairly and equitably in order to promote compliance with the standards set out in the Code of Conduct.</p>

How does the policy promote good relations between different groups?
Although this policy is not designed to promote good relations between different groups, if the strategy is implemented fully, relations are likely to be improved due to the robust enforcement of the equality and diversity provisions of the Code of Conduct.

### 3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	You will continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	<b>X</b>
c. Adjust the policy and continue	You will take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision:  Although we have identified the potential for impacts on some groups, we will continue to implement the strategy because it is needed in order to ensure that the BSB's enforcement tools are managed efficiently. The strategy will allow the BSB to apply enforcement tools proportionately in order to address non-compliance with its regulatory requirements.  We will continue to monitor the complaints received, the outcomes of the enforcement strategy in terms of the sanctions applied, and the outcomes of any other relevant research, to ensure that the strategy is applied in a fair and equitable manner. If any element of the strategy is found to be discriminatory it will be reviewed immediately.		

### 4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.
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Action Required	Person responsible	Timescale
1. Develop detailed policies and procedural documentation to ensure that the strategy is applied fairly and equitably.	PCD Operation Support Team Manager	Documentation will need to be drafted and used to train decision makers in advance of the new Handbook and strategy going live in January 2014. A project to develop all aspects of the roll out of the new Code will be carried out April – September 2013
2. Decision-makers involved in the application of enforcement tools to be trained on the application of the enforcement strategy and the underpinning policies and procedures.	PCD staff - tbc	Decision makers will need to be trained in advance of the new Handbook and strategy going live in January 2014. The roll out project referred to above will cover this work.
3. Detailed policies and procedural documentation to be reviewed to ensure that they remain up to date, fit for purpose and support the fair and equitable application of the strategy	PCD Operation Support Team Manager	As and when required following roll out of strategy in Jan 2014
4. Monitor and report on the protected characteristics of those individuals referred to PCD by the Supervision Department. Discuss any apparent anomalies with the Supervision Department and determine whether any changes to procedures are required.  This will require Supervision Department to share its equality data with PCD when referring an individual.	PCD Reports and Data Analysis Officer	Once per year
5. Monitor the protected characteristics of individuals who are the subject of a complaint and/or enforcement action (this work is already carried out on an annual basis).  An analysis of this data will ensure that all individuals, and specifically those with protected characteristics, are receiving fair and equitable treatment. Where anomalies are identified further research will be conducted to try and understand why the anomalies arose and what, if anything, can be done to address them.	PCD Reports and Data Analysis Officer	Once per year

<p>6. Monitor the number and nature of adjustment and/or additional support made for individuals with protected characteristics eg reasonable adaptation for those with a permanent disability.</p> <p>An analysis of this data will ensure that individuals with protected characteristics are facing unreasonable barriers that prevent them from receiving fair and equitable treatment.</p>	<p>PCD Reports and Data Analysis Officer</p>	<p>Once per year</p>
<p>7. Monitor the protected characteristics of individuals who have sanctions imposed upon them (this work is already carried out on an annual basis).</p> <p>An analysis of this data will ensure that all individuals, and specifically those with protected characteristics, are receiving fair and equitable treatment. Where anomalies are identified further research will be conducted to try and understand why the anomalies arose and what, if anything, can be done to address them.</p>	<p>PCD Reports and Data Analysis Officer</p>	<p>Once per year</p>
<p>8. Keep the enforcement strategy under review to ensure that it remains up to date, and fit for purpose.</p>	<p>PCD Operation Support Team Manager/PPT Senior Policy Officer - tbc</p>	<p>Ongoing</p>