



Attorney General's Office

Achieving Equality  
and  
Diversity  
in the  
Procurement of Legal  
Services  
from the Bar



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# Achieving Equality and Diversity in the Procurement of Legal Services from the Bar

**The Law Officers (both past and present) have a long standing commitment to the principles of equality and diversity. This includes ensuring that all instructing Departments and Agencies continue to meet their legal obligations to promote equality and diversity in the procurement of legal services from the Bar and indeed seek to promote best practice in this regard.**

## The vision

The Law Officers' aspirations in respect of their panels of counsel approved to act on behalf of Government Departments and Agencies, Standing Counsel appointed to particular Government Departments, counsel retained pursuant to CPS London's External Advocates Scheme and criminal Treasury Counsel (together referred to as "external counsel") are as follows:

- 1 The overriding objective is to ensure excellence in the quality of legal advice and representation provided by external counsel
- 2 The appointment and management of external counsel should be undertaken in such a way as to enable the diversity profile of external counsel where possible to reflect that of the available pool of candidates. This will be undertaken in the following ways:
  - (a) The application process will be conducted so as to promote the greatest possible diversity in applications in terms of personal background and location of individuals.
  - (b) The selection process will be managed in such a way as to ensure that appointments are made on merit and without regard to the personal background of any of the applicants and that applicants are reassured and understand that this is the case
  - (c) Instructions to counsel after appointment will be allocated irrespective of the personal background of counsel.
  - (d) Data indicating the effect of strategies adopted under paragraphs (a) to (c) will be obtained both internally and, where possible, from the Bar Council, and outcomes will be monitored carefully against the Law Officers' aspirations and to provide them with clear explanations for any gaps in achievement.
- 3 The Law Officers will undertake all steps in paragraph 2 with the aspiration that by 2012 the diversity in all ways of the range of applications for external counsel positions will reflect as closely as possible the diversity of the available pool and that, where this has not been achieved, there is a clear understanding of the reasons for the discrepancy and strategies in place for addressing it.

| Objectives   | Key actions  | Timetable                              | 4 year outcome   | Ownership |
|--|--|--|--|-----------|
| <b>1</b><br><b>Diversity in applications</b>   |  |  | Increase in range of diversity of applications in terms of gender, ethnic origin, sexual orientation, age, religion, disability and chambers |           |
| <b>1.1</b><br><b>Civil Panels</b><br>Promote the Panels and improve accessibility for candidates | (a) Roadshows (including targeted roadshows for specific diversity groups) to raise profile of the panels in advance of competition and to build relationships especially with regional counsel. Consider large joint event with Unified List. | Start in advance of Spring/Autumn 2008 |  | TSol/AGO  |
|  | (b) Mentoring project. Consider whether to extend beyond recruitment exercise to offering support to junior C panellists at start of Government work.  | Start Autumn 2008 round                |  | TSol/AGO  |

| Objectives   | Key actions   | Timetable               | 4 year out-come | Ownership                  |
|--|---|-------------------------|-----------------|----------------------------|
|  | (c) Adoption of Attorney General's Expectations Statement for Civil and Criminal Panels   | Complete by Spring 2008 |                 | TSol/AGO                   |
|  | (d) Collect data on the diversity aspects of those applying and compare with previous recruitment and Bar information.  | Annually                |                 | TSol/AGO                   |
| <b>1.2 Unified List</b><br>Promote the List and improve accessibility for candidates | (a) Roadshows to raise profile of the panels in advance of competitions and to build relationships especially with regional counsel. Consider large joint event with civil panels | Spring/autumn 2008      |                 | Unified List Board and AGO |
|  | (b) Adoption of Attorney General's Expectations Statement for Civil and Criminal Panels   | Spring 2008             |                 | Unified List Board and AGO |

| Objectives | Key actions   | Timetable   | 4 year outcome | Ownership                  |
|------------|---|-------------|----------------|----------------------------|
|            | (c) Launch of pre C list pool, creating approved pool of junior barristers with light touch application process for low level prosecutorial work                                    | Summer 2008 |                | Unified List Board and AGO |
|            | (d) Launch of Unified List page on AGO website to promote List, provide networking forum for List counsel and provide guidance for applicants                                       | Spring 2008 |                | Unified List Board and AGO |
|            | (e) Revision of Unified List competition to a yearly exercise, with resulting improvement in accessibility for candidates   | Autumn 2008 |                | Unified List Board and AGO |
|            | (f) Review advertising strategy generally to ensure as wide a range of applicants as possible. Include a question on application forms to identify where adverts are most effective |             |                |                            |

| Objectives  | Key actions   | Timetable                 | 4 year out-come | Ownership   |
|---|---|---------------------------|-----------------|---|
| <p><b>1.3<br/>CPS</b></p>   | <p>(a) Implementation of External Advocacy Scheme in CPS London provides a baseline profile of applicants and appointees for prosecution work in CPS London</p> |                           |                 | <p>CPS</p>  |
|   | <p>(b) Explore feasibility of introducing a version of the EAS across all CPS Areas and through this maximise and obtain diversity profile of applicants</p>    |                           |                 |   |
|   | <p>(c) Implement diversity monitoring of applicants for CPS prosecution work</p>  |                           |                 |   |
| <p><b>1.4<br/>Standing Counsel</b><br/>Promote Standing Counsel opportunities</p> | <p>(a) Include Standing Counsel appointments in scope of roadshows</p>  | <p>Spring/autumn 2008</p> |                 | <p>TSOI, Unified List Board, individual Departments and AGO</p> |

| Objectives  | Key actions  | Timetable            | 4 year out-come   | Ownership                     |
|---|--|----------------------|---|-------------------------------|
|   | (b) Promote possibilities of ethnic, gender and geographic diversity in dialogue with Departments  | Spring/autumn 2008   |   | TSol, Unified List Board, AGO |
| <b>1.5 Treasury Counsel (Criminal)</b>  | (a) Include information on Treasury Counsel in the scope of the roadshows  |                      |   | Treasury Counsel Committee    |
|   | (b) Continue with Mentoring process to support those on the moni-toree programme   |                      |   |                               |
| <b>2 Diversity in appointments</b>  |  |                      | Diversity of external counsel to improve to reflect that of available pool more closely by 2012 |                               |
| <b>2.1 Civil Panels</b><br>Ensure appointments process is transparent and merit based | (a) Seek to ensure profile of selection boards reflects diversity considerations and to compare with previous recruitment and Bar information on Bar diversity make-up | Start in Autumn 2008 |   | TSol/AGO                      |

| Objectives  | Key actions  | Timetable   | 4 year outcome | Ownership  |
|---|--|---|----------------|--|
| <b>2.2 Unified List</b><br>Ensure appointments process is transparent and merit based     | (a) Monitor profile of selection boards to ensure representation of the pool of applicants.                                | Spring/Autumn 2008  |                | Unified List Board and AGO                               |
| <b>2.3 CPS</b>  | (a) Monitor implementation of CPS Equality and Diversity Expectations Statement  | (1) sets with 45 plus members monitored in 2008-09<br>(2) sets with 20-44 members monitored in 2009-10; and<br>(3) sets with 1-19 members monitored in 2010 -11 |                | CPS  |
| <b>2.4 Standing Counsel</b><br>Ensure appointments process is transparent and merit based | (a) Monitor profile of selection boards. Ensure Departments have fully considered possibilities of geographical diversity. | Operated by 2009/2010   |                | TSOI, Unified List Board, individual Departments and AGO |
| <b>2.5 Treasury Counsel (Criminal)</b>  | (a) Monitor profile of selection board.  |   |                | Treasury Counsel Committee                               |

| Objectives   | Key actions   | Timetable                    | 4 year out-come  | Ownership |
|--|---|------------------------------|--|-----------|
| <b>3</b><br><b>Equality of opportunity in allocation of work</b>                                     |   |                              | Instructions to be allocated irrespective of the personal background of counsel. |           |
| <b>3.1</b><br><b>Civil Panels</b><br>Ensure balance in terms of spread of allocation of instructions | (a) Continue to provide quarterly returns and record keeping  | Quarterly (ongoing)          |  | TSol/AGO  |
|  | (b) Provide more opportunities for panel counsel to make presentations to Departments,  | Start by Spring/Summer 2008? |  | TSol/AGO  |
|  | (c) Dialogue with Departments; flagging up names of those un-instructed without obvious reason (such as maternity leave or secondment). | Quarterly (ongoing)          |  | TSol/AGO  |

| Objectives   | Key actions   | Timetable         | 4 year outcome | Ownership                             |
|--|---|-------------------|----------------|---------------------------------------|
|  | (d) Keep records of off panel nominations and discuss with Law Officers any obvious patterns in terms of allocation of instructions | Monthly (ongoing) |                | TSol/AGO                              |
|  | e) Liaise with Bar Council, Judicial Appointments Commission and any other bodies working on improving the diversity of the Bar     | Six monthly       |                | TSol, Unified List Board, CPS and AGO |
| <b>3.2 Unified List</b><br>Ensure balance in terms of spread of allocation of instructions | (a) Continue to provide quarterly returns and record keeping  | Quarterly         |                | Unified List Board and AGO            |
|  | (b) Dialogue with Departments through Unified Board meetings. Ensure Board meets regularly.   | Quarterly         |                | Unified List Board and AGO            |
|  | (c) Keep monitoring sheets under review   | Annually          |                | Unified List Board and AGO            |

| Objectives                                 | Key actions  | Timetable | 4 year outcome | Ownership  |
|--|--|-----------|----------------|--|
| <b>3.3<br/>CPS</b>                         | <p>(a) CPS London have put in a bid for a software package which will assist in monitoring and analysing this information</p> <p>Extract information on allocation of work by diversity profile from the monitoring exercises undertaken as part of implementing the Equality and Diversity Expectations Statement</p> |           |                | CPS  |
| <b>3.4<br/>Standing Counsel</b>            | N/A  |           |                | TSOI, Unified List Board, individual Departments and AGO |
| <b>3.5<br/>Treasury Counsel (Criminal)</b> | <p>Continue to keep records on the allocation of work amongst TC and monitors.</p> <p>Continue with quarterly summaries of work distribution.</p>  | Ongoing   |                | Treasury Counsel Committee                               |

| Objectives  | Key actions   | Timetable   | 4 year out-come   | Ownership |
|---|---|-------------|---|-----------|
| <b>4<br/>Monitoring<br/>process</b>   |   |             | Any discrepancies between the diversity of external counsel and that of the available pool should, by 2012, be fully documented and understood so that further strategies can be put in place to address the differential |           |
| <b>4.1<br/>Civil Panels</b><br>Analyse any differential between diversity profile of panels and diversity profile of available pool | (a) Ensure diversity monitoring forms are completed and returned to as high a level as possible | Annually    |   | TSol/AGO  |
|   | (b) Liaise with Bar Council to ensure that LSC survey results are provided.                     | Spring 2008 |   | TSol/AGO  |
|   | (c) Explore means of obtaining more targeted information especially re regions and specialisms  |             |   | TSol/AGO  |

| Objectives  | Key actions   | Timetable                            | 4 year out-come | Ownership   |
|---|---|--------------------------------------|-----------------|---|
| <p><b>4.2 Unified List</b><br/>Analyse any differential between diversity profile of panels and diversity profile of available pool</p>     | <p>(a) Ensure diversity monitoring forms are completed and returned to as high a level as possible. This will be easier when the competition takes place on an annual basis</p> |                                      |                 | <p>Unified List Board and AGO</p>                               |
|   | <p>(b) Liaise with Bar Council as above</p>   |                                      |                 | <p>Unified List Board and AGO</p>                               |
| <p><b>4.3 CPS</b><br/>Analyse any differential between diversity profile of EAS and diversity profile of available pool</p>                 | <p>(a) Analyse any differential between diversity profile gleaned from monitoring of the CPS Expectations Statement returns and diversity profile of the available pool</p>     |                                      |                 | <p>CPS</p>  |
| <p><b>4.4 Standing Counsel</b><br/>Analyse any differential between diversity profile of panels and diversity profile of available pool</p> | <p>(a) Ensure completion and return of diversity monitoring returns</p>   | <p>2010 and on every competition</p> |                 | <p>TSOI, Unified List Board, individual Departments and AGO</p> |

| Objectives   | Key actions   | Timetable   | 4 year outcome | Ownership                        |
|--|---|-------------|----------------|----------------------------------|
|  | (b) Liaise with Bar Council. More targeted information on specialisms and regions is especially relevant for SC   |             |                | TSOI, Unified List Board and AGO |
| <b>4.5 Treasury Counsel (Criminal)</b>   | Ensure diversity monitoring forms are completed and returned to as high a level as possible for any recruitment exercise.   |             |                | Treasury Counsel Committee       |
| <b>4.6 Bar Council</b><br>Provide evidence on available pool in order to support AG diversity strategies | Provide AG with statistics on diversity in relation to ethnic background and gender in respect of: <ul style="list-style-type: none"> <li>■ Years of call</li> <li>■ Geographical region</li> <li>■ Area of speciality</li> </ul> | End of 2008 |                | Bar Council                      |

## Background to the Law Officers' diversity strategy

- 1 The Attorney General has the right to appoint all counsel acting on behalf of Government. All Departments must therefore instruct counsel who are appointed to the Attorney's panels or who have been approved under other arrangements. Otherwise, they must in each case seek an individual nomination from the Law Officers.
- 2 Panels of approved counsel include:
  - (a) London panels of counsel approved for civil and EU work for all Government Departments, divided into three lists (A, B and C).
  - (b) A regional panel approved for civil and EU work for all Government Departments.
  - (c) A single criminal panel (called the Unified List of Prosecuting Advocates, consisting A, B and C lists and divided according to circuits) serving Government Departments and non-Departmental public bodies that conduct their own prosecutions. They are RCPO, BERR, DWP, Defra, HSE, EA and ORR.
  - (d) Other panels approved for particular Departments (such as the SFO) and other lists or panels established from time to time to meet Departmental needs or to work in particular fields.
- 3 In addition, the Attorney General also appoints:
  - (a) A First Treasury Junior (Common Law) and a First Treasury Junior (Chancery)
  - (b) A number of Standing Junior Counsel who advise and act for particular Departments in relation to particular specialist areas.
  - (c) Treasury Counsel at the Old Bailey, who are Standing Counsel on Criminal Matters for Prosecutions in England and Wales. These comprise separate lists of Senior Counsel and Junior Counsel at the Central Criminal Court.
  - (d) Counsel retained according to Grades 1 to 4 under CPS London's External Advocates Scheme.

- 4 The Law Officers welcome the opportunity to formalise existing streams of activity under a strategy and look forward to input and contributions from the Bar to support their objectives. Current streams of work include the following:
- (a) A robust infrastructure for approving off panel nominations and Queen's Counsel. Departments are required to complete a pro forma giving reasons for not instructing panel counsel, and records are kept of off panel nominations which indicate criteria such as gender, chambers and instructing Departments. Monthly reports are then reviewed by the Law Officers, who also hold six monthly meetings with AGO and TSol officials to consider general trends. Feedback on data is provided to individual Departments.
  - (b) All panel counsel competitions include a letter written by the Law Officers to applicants encouraging them to complete diversity monitoring forms. The Law Officers attend open events during recruitment rounds to encourage applicants from as wide a range of backgrounds as possible. Other recent initiatives have included the provision of mentors, in the form of current B panel members, for those applying to the civil C panel from chambers without existing panel members. Applications forms, guidance and process are kept under constant review to ensure that they support the appointment of the highest calibre candidates from the widest range of backgrounds.
  - (c) Various initiatives aimed at supporting the engagement with existing panel counsel have included an event at which specific GLS litigation teams were invited to make presentations to panel counsel interested in particular areas of work.
  - (d) AGO liaise with both TSol and the Unified List to coordinate panel counsel issues across Government. This has recently resulted in a protocol for the appointment of all Standing Counsel, criminal and civil, on a streamlined basis.
  - (e) Regular meetings are held between AGO and TSol to discuss panel counsel and nomination issues.
  - (f) Meetings are held by the Law Officers with representatives of TSol, the Unified List Management Board and the CPS, together with the Bar Council Equality and Diversity Committee, to review arrangements and diversity issues.
  - (g) In 2006, the post of First Treasury Counsel was advertised in public for the first time in the history of the post.





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