



THE BAR OF IRELAND The Law Library BARRA NA hÉIREANN An Leabharlann Dlí

EQUITABLE BRIEFING: Guiding Principles for Briefing Entities

Promoting equality, diversity and inclusion in legal services: Delivering better for clients

March 2023



THE BAR OF IRELAND The Law Library BARRA NA hÉIREANN

An Leabharlann Dlí



CONTENTS

Foreword	3
What is Equitable Briefing?	4
Why is Equitable Briefing important and necessary?	4
What are the benefits of Equitable Briefing?	6
How to sign up to the policy	8
Promoting your commitment	8
Practical steps to help implement your commitments	9
Reporting obligations	10
Reporting cycle	10
Confidentiality and use of reported information	
What is the Bar doing to fulfill its reporting obligations under the initiative?	12
Reporting obligations for Counsel	13
Definitions	13
Review and development of the initiative	14
Contact / Further Information	14
Appendix A: Terms and Conditions of the Equitable Briefing Policy	15

FOREWORD

It is with great pleasure that we launch The Bar of Ireland's Equitable Briefing Policy. Approved by the Council of The Bar of Ireland in June 2022, the policy is a vital tenet of The Bar of Ireland's Equality Action Plan, the aims of which are to enhance access to the profession and to promote a diverse membership.

Building and sustaining a truly diverse membership requires targeted initiatives, and in this instance, a real focus is being placed on female participation and achieving equality of opportunity across the sector. The improving rates of female participation across the professions is welcomed. Yet, it is apparent from the data that those rates are not translating to progressions to senior levels. Furthermore, certain practice areas have historically tended to be dominant in one gender over another. We believe that our system of administration of justice benefits from equitable consideration and participation of all genders. The policy therefore asks firms and entities with briefing authority (including State bodies and agencies) to make all reasonable endeavours to consider gender in selecting and recommending a diverse panel of barristers, once the objectives of seniority, expertise, and experience have been satisfied.

The policy addresses documented historic and cultural unconscious gender bias in a tangible way, but it also goes to the heart of client care, innovation and developing a broader briefing cohort to match a variety of demands. Following a series of engagements with firms during the policy's creation, feedback was such that this policy is welcomed, that it aligns with the values that progressive firms are seeking to build into their DNA, and that choice and client care are key drivers for it. Clients demand demonstrable diversity in their legal representation and the Equitable Briefing Policy is another framework within which to show a practical commitment to meeting clients' needs. The dividend this policy delivers to a sustainable Bar, a representative profession, and a diverse approach to problem solving, is clear.

As with any targeted initiative, data is key to measuring success. Signatories to the policy will be invited to take part in an annual anonymised data-collection process to track their progress and identify any necessary future supports that may be required. The value of full participation and thoughtful reporting, leading to a well-rounded and balanced data set, cannot be overstated.

The Bar itself also has a body of work to do, not only to support signatories to the policy, but also to drive the change that we are seeking to effect. Those actions include improved communications with firms, strengthening our members digital footprint, as well as greater consideration of how we can leverage our events and CPD offerings, not only to optimise the opportunities for the practice development of all counsel, but to showcase the available talent at the Bar. Fellow barristers, who play a role in the identification and recommendation of colleagues, both for new work and for hand-overs, can also sign up to the policy.

We look forward to working closely with signatories and call on all members of the Law Library, solicitor firms, organisations, and entities with briefing authority to join us in realising the transformative power which diversity brings to the business of law and the administration of justice, to the benefit of clients, legal professionals and society as a whole.





Sara Phelan SC Chair, Council of The Bar of Ireland

Raje Farraco

Aoife Farrelly BL, Chair, Equality and Resilience Committee of The Bar of Ireland

WHAT IS EQUITABLE BRIEFING?

Equitable briefing raises awareness of unconscious bias in briefing decisions. It seeks to encourage those who brief the Bar to make a conscious effort to look beyond their usual pool of counsel and to assist in more equitable distribution of briefing in all areas of practice. This policy will initially focus on gender-equitable distribution with a view to expanding that focus to other areas of equitable briefing.



Whilst acknowledging that the selection of counsel is ultimately the decision of the client, equitable briefing simply asks that all reasonable endeavours are made when briefing counsel with the required seniority, expertise, and experience in the relevant practice area, that the distribution of briefs by gender be considered. Where there are equally capable female and male counsel available, arbitrary and prejudicial factors should not operate to exclude the engagement of female counsel.

WHY IS EQUITABLE BRIEFING IMPORTANT AND NECESSARY?

This initiative is one of many actions driven by the Equality & Resilience Committee of the Council of The Bar of Ireland to support the progression and retention of women at the Bar. It specifically sets out to address the underrepresentation of women in practice areas where women are not briefed, or are infrequently briefed, and the significant under-representation of women at the Inner Bar (20%). The fact of female counsel not having gained the requisite experience due to a lack of the same career opportunities as their male counterparts is a significant factor contributing to the low proportion of women applying to take silk.

A survey of the female membership of the Law Library undertaken in 2016 reported findings of solicitors and clients tending to engage male counsel across many areas of practice. Respondents to the survey also expressed the view

that they are often 'pigeon-holed' into particular areas of practice because they are female. A follow-up survey in 2021 on equality, diversity and inclusion at the Bar reported similar findings with many female respondents reporting 'a curious pressure to work in family law', and many raising issue with men's ability to 'get briefed in higher profile, better paying work'.

Consultation with solicitor firms indicates an increasing focus on equality, diversity and inclusion initiatives within firms, and a particular emphasis on gender equality. In many firms, this extends to the firm's briefing practices, with solicitors ensuring gender balance in the selection of counsel presented to clients. Diversity is also more frequently driven by clients. Clients are actively seeking gender balance in the selection of counsel on offer, and there is a notable trend in the establishment of gender-responsive eligibility and evaluation criteria in the solicitation of bids in tendering and procurement processes. It is now widely acknowledged that diversity equates to good business.

Despite firms' efforts to enhance gender equality in the distribution of briefs, a lack of female counsel at senior levels, and in the superior courts, and a lack of visibility of female expertise in certain areas of practice (e.g. commercial law) present challenges. This initiative intends to address these issues and The Bar of Ireland will have a significant role to play in maximising access to and visibility of female counsel across all areas and jurisdictions of practice.

While the initial focus of this policy is gender equality, it is fully accepted that inclusion within briefing practices is a broader subject than only gender diversity. It is envisaged that the scope of this policy will be reviewed after the first three years to address other important issues such as expanding the policy to include the representation of racial and ethnic minorities and counsel with a disability. We envisage that this review will be conducted in consultation with those who have committed to the policy.

WHAT ARE THE BENEFITS OF EQUITABLE BRIEFING?

Equitable briefing not only presents clear benefits to the career development of female counsel; the equal participation of both genders in the provision of legal services leads to significant gains for the client and the wider legal and justice sector.

Equitable briefing:

- Maximises choice for practitioners and clients by promoting the full use of the independent referral bar.
- Expands the existing and prospective pool of talent and skills available, leading to a much more diverse pool of suitably qualified counsel on whom to call.
- Meets increasing client expectations with respect to genuine participation and inclusion of women.
- Delivers transformative power of gender equality to the business of law e.g. diverse groups bring a greater variety of experience, enhanced insights, skill sets, tactics and decision-making.
- Delivers transformative power of gender equality in the public interest e.g. more representative of the composition of the community it serves; reflects community expectations of fairness in all aspects of the administration of the law.
- Allows the professions and the legal sector to take a leadership role, demonstrating that by taking practical steps, greater equality and diversity can be achieved to the benefit of society.
- Accords with the professions' legal obligations to address and to eliminate gender bias.
- Improves progression of women in the law; to senior levels of public service and private practice; and to the bench.
- Addresses documented historic and cultural unconscious gender bias in a tangible way.
- Creates a fairer, more equitable environment for all members of the independent referral bar, which will be positive and affirmative of all members.
- Aligns with wider equality and diversity policies and objectives in the legal sector.

HOW CAN BRIEFING ENTITIES SUPPORT EQUITABLE BRIEFING?

The Bar of Ireland invites solicitor firms, state agencies and any other organisations or individuals with briefingmaking authority, to support this initiative by signing up to the following commitments:

1	To give genuine consideration to female counsel with a view to increasing the number of women briefed in practice areas where women are not briefed, or are infrequently briefed.
2	To establish an action plan which provides an outline of the measures being implemented to achieve greater gender equality in the distribution of briefs. It is acknowledged that some firms will already have protocols in place which promote the equitable distribution of briefs and engagement of female counsel and these firms are therefore invited to establish action plans which build upon existing objectives. Given that the initiative is in its infancy and data is yet to be collected which would give an accurate overview of current briefing trends and practices, it is not intended to set briefing targets at this point in time.
3	To report progress annually through the confidential sharing of data on the gender distribution of briefs, and an accompanying narrative setting out the measures taken by the briefing entity to implement their commitments under the policy. This information will enable The Bar of Ireland to develop a baseline from which it can monitor trends and to accumulate knowledge and best practice as to successful implementation measures, in addition to measures which did not yield the anticipated results.

How to sign up to the policy

Briefing entities can sign up to the initiative by completing the online form at <u>lawlibrary.ie/equitable-briefing</u>.



The form requires confirmation on agreeing to **terms and conditions** [See Appendix A]. Among other things, the terms and conditions outline the circumstances in which The Bar of Ireland may collect and store the personal information that signatories provide through their participation. The terms and conditions also address the confidentiality of information reported by signatories, and what use may be made of reported information.

The Bar of Ireland at all times will undertake to treat the reported information received as confidential, and it will not report or disclose the reported information other than on an aggregated, anonymised basis. We acknowledge and agree that the reported information is of commercial value to the discloser and that any disclosure of the reported information other than for the permitted purpose in accordance with the terms and conditions may cause damage to the discloser. Please refer to the terms and conditions for further details.

Promoting your commitment

Each signatory will be asked to supply a company logo (if signing up on behalf of an organisation) so that the briefing entity's branding can be published on the Law Library website for promotional purposes, and to acknowledge and confirm their commitment to the initiative.



In addition, The Bar of Ireland's logo for the initiative may be used by briefing entities to indicate their participation in same. Briefing entities are welcome and encouraged to showcase their commitment to equitable briefing through their website and marketing materials and to promote the initiative widely among colleagues, clients and through other suitable channels.

Practical steps to help implement your commitments

The following guidelines are designed to provide practical measures to facilitate the implementation of a briefing entity's commitment to equitable briefing.

There are a number of ways in which a briefing entity can give effect to its commitments. The following suggestions are for illustrative purposes only and are non-exhaustive. The Bar of Ireland furthermore acknowledges that it has a significant role to play in facilitating many of these actions and will be available to assist and collaborate with briefing entities in order to maximise success.

- Prepare and maintain an internal referral list/database of female counsel, which is regularly updated.
- Consider instructing a wider set of female counsel, including "new" female counsel with whom you have not previously worked. Efforts should be made to avoid repeatedly instructing a small pool of the same female counsel.
- Obtain relevant information about female counsel, such as up to date contact details, qualifications, seniority, practice areas and experience through the <u>Find a Barrister</u> search tool on the Law Library website and the membership database of the various <u>Specialist Bar Associations</u>. The Bar of Ireland's website encompasses a new and improved search tool with more search terms and greater access to information about a counsel's expertise and experience to make it easier for solicitors and clients to identify suitably qualified counsel.
- Elicit expressions of interest by inviting female counsel to provide statements of their relevant experience and areas of interest. The Bar of Ireland is happy to facilitate the invitation of expressions through the weekly member ezine, In Brief. Please contact <u>equality@lawlibrary.ie</u> as your needs arise.
- Seek recommendations about female counsel from counsel in your organisation's existing network. For example, when asking counsel to recommend colleagues, or in circumstances where a preferred senior counsel may be asked to suggest junior colleagues to work alongside them, request both male and female names for consideration.
- Acknowledge that there may be a need to make accommodations from time to time for counsel with caring responsibilities and that such should be facilitated to the greatest extent possible. It is important that periods of maternity leave are normalised and accepted, with suitable accommodations made by instructing solicitors and clients, in recognition of the fact all members of the Bar are self-employed.
- Communicate with clients about the initiative.
- If the client requests a list of counsel who might be engaged to provide legal services in any capacity, include comparable female counsel to male counsel in that list, once skill, experience and seniority have been satisfied.
- Attend and host a range of events to meet and profile female counsel and introduce them to clients.
- Keep abreast of, and attend, upcoming events of <u>Specialist Bar Associations</u> whose programme of CPDs and conferences are a useful resource in identifying experts in specialist areas of law. Other useful resources include <u>The Bar of Ireland's podcast channel</u> and its <u>LinkedIn page</u> which frequently showcase the range of available expertise at the Bar.

- Invite female counsel to contribute to your organisation's own CPD initiatives via presentations, webinars or written material for internal/client ezines with the aim of developing connections with more female counsel across a range of expertise/practice areas. The Bar of Ireland is keen to assist you with locating relevant expertise for such internal pieces. Please contact equality@lawlibrary.ie as your needs arise.
- Hold an event on the topic of equitable briefing, with the purpose of discussing your commitment to the initiative and provide a networking opportunity for female counsel.
- Appoint an Equitable Briefing Policy champion within your organisation to drive and maintain commitment to the initiative.

Reporting obligations

It is crucial that signatories comply with their commitments to implement this initiative and to report on that implementation. The value of full participation and thoughtful reporting, leading to a well-rounded and balanced data set, cannot be overstated. In order to allow The Bar of Ireland to measure and evaluate the impact of the initiative, briefing entities should develop the capacity to collect data and to report upon that data so as to identify the nature of engagement with counsel.

A briefing entity's confidential report would be expected to address at the very least the following information **by reference to gender**:

- Number of junior and senior counsel briefed;
- The percentage value of briefs paid to junior and senior counsel;
- Whether the briefing entity is tending to use the same pool of counsel or whether any of the reported instructions are to counsel not previously briefed.

The Bar of Ireland has developed an <u>online portal</u> to assist signatories in submitting a confidential annual report.

Reporting cycle

The reporting cycle aligns with the legal year: October - September.

Signatories are requested to provide a confidential report on their briefing practices, including a brief overview of the measures taken to implement the above commitments on an annual basis.

The Bar of Ireland will draw upon the results of this annual review and will consult with signatories on the impact the initiative is having on briefing trends and practices and how improvements might be made to identify a pool of talented, experienced and skilled counsel of all genders.



Confidentiality and use of reported information

In accordance with data protection obligations, only high-level statistics in a format that does not identify any individual barrister or client is requested. The Bar of Ireland will collate and analyse all data provided and produce a final report of figures for publication. Published data will be aggregated so as not to disclose any identifying features (including name of firm/briefing entity), nor will the data be framed in such a manner that would have the effect of pitting briefing entities against one another in some form of performance index. Data will be used purely for evaluation purposes. Reported information will be held in the strictest confidence and will not be disclosed or otherwise made available to any person other than for the permitted purpose. Please refer to the **terms and conditions** for details [**See Appendix A**].

WHAT IS THE BAR DOING TO FULFIL ITS OBLIGATIONS UNDER THE INITIATIVE?



The Bar of Ireland acknowledges that it has a significant role to play in ensuring the success of this initiative. This includes supporting access to and maximising the visibility of female counsel across all areas of practice. The following suggestions illustrate some of the actions the Bar is proposing to implement:

- Continue to monitor and improve the search functionality on the Law Library website to enable easier location of suitably qualified counsel across all areas of practice.
- Ensure gender balance in the composition of speakers at The Bar of Ireland's CPD events, conferences and panel discussions.
- Host joint events and CPDs with firms/briefing entities to facilitate the sharing and exchange of knowledge; to maximise exposure to the available expertise at the Bar; and to provide networking opportunities for counsel and solicitors.
- Regularly check-in with firms/briefing entities in order to understand their needs and priorities with regard to the implementation of their commitments under the initiative and to identify ways in which The Bar of Ireland can be of assistance.
- Establish partnerships with, for example, the Specialist Bar Associations, the Law Society, the Dublin Solicitors Bar Association, the Irish Women Lawyers Association, local bar associations on circuit etc., to support and promote the initiative.
- Host information seminars for members of the Law Library to raise awareness and support of the initiative; to encourage members to promote the initiative within their networks; and to sign up to the initiative themselves.

Counsel too can support this initiative and sign up to the above commitments. Participating counsel would be asked to make all reasonable endeavours to ensure that all recommendations they make to clients and briefing entities of other counsel include comparable female counsel to male counsel, once skill, experience and seniority have been satisfied. Counsel would also be requested, in 'handing over' work to a colleague, to be gender-aware and gender-equitable.

Reporting obligations for Counsel

For any counsel that wishes to support this initiative and sign up to the above commitments, the following information **by reference to gender** would be sought:

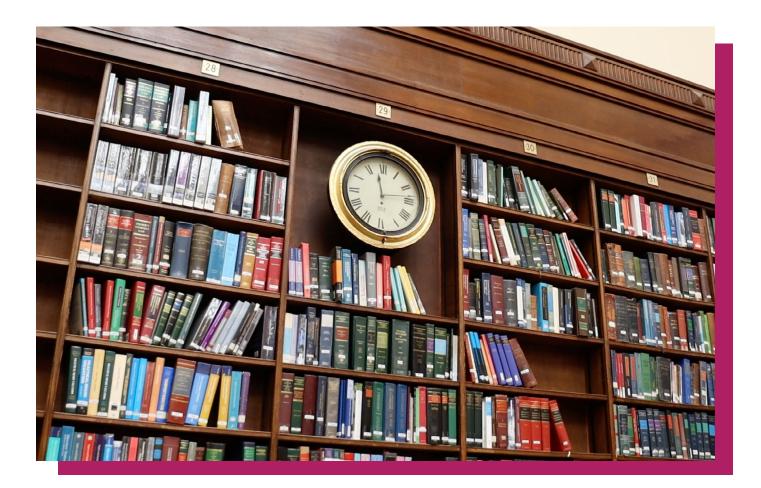
- The number of male and female counsel briefed with them
- The number of male and female counsel recommended by them

The Bar of Ireland has developed an <u>online portal</u> to assist barrister signatories in submitting a confidential annual report.

DEFINITIONS

For the purpose of this initiative, the following definitions will apply:

Barrister/Counsel:	A practicing member of the Law Library.	
Junior Counsel:	A practicing member of the Law Library who has not taken silk and is a member of the Outer Bar.	
Senior Counsel:	A practicing member of the Law Library who has taken silk and is a member of the Inner Bar.	
Brief:	Engagement of legal services provided by counsel in judicial (before courts and tribunals), non-judicial (through commissions of inquiry, investigations, negotiation, mediation or arbitration), non-contentious and advisory work. Many briefs given in a particular financial year are not completed, invoiced and paid for in the same financial year. Signatories should report on the basis of briefs paid within the financial year being reported upon.	
Briefing entity:	A person, corporation, entity, firm, partnership, government or body who recommends or briefs counsel to advise or to appear in Ireland or overseas.	



REVIEW AND DEVELOPMENT OF THE INITIATIVE

The Bar of Ireland recognises the need to monitor the impact and operation of this initiative and to conduct periodic reviews to ensure that it is appropriate and fit for purpose. It will engage and consult with all signatories and relevant stakeholders in this regard.

CONTACT / FURTHER INFORMATION

For more information in relation to the policy see <u>www.lawlibrary.ie</u>. Queries can be addressed to <u>equality@</u> <u>lawlibrary.ie</u>

APPENDIX A: TERMS AND CONDITIONS OF THE EQUITABLE BRIEFING POLICY

SIGNING UP TO THE EQUITABLE BRIEFING POLICY

By signing up to The Bar of Ireland's Equitable Briefing Policy ("the policy"), you / your briefing entity accept the following Terms and Conditions:

1. AUTHORITY

- **a)** Your organisation is a law firm, or other organisation associated with the legal profession, and you have authority to commit your entity to signing up to the policy.
- **b)** You are a barrister and you are signing up to adopt to the policy on your own behalf;

2. COMMITMENT

You have, or your entity has, committed to making all reasonable endeavours to brief, select or recommend female counsel with relevant seniority and expertise, experience or interest in the relevant practice area as per the policy. Where you or your organisation engage/s in activities or initiatives that, in the reasonable opinion of The Bar of Ireland, do not seek to build and maintain diversity and equality in the workplace or operate against these objectives, The Bar of Ireland reserves the right to revoke your/organisation's rights under (4).

3. AVAILABILITY

To the extent permitted by law, The Bar of Ireland makes no representation, warranty or guarantee in relation to the availability, continuity, reliability, accuracy, currency or security (including the presence of viruses, malicious code or other harmful components) of the policy, and The Bar of Ireland is not liable to you or your organisation if the policy is unavailable or unable to be downloaded for any reason. Please contact <u>equality@</u> <u>lawlibrary.ie</u> if you are experiencing difficulty downloading the policy.

4. USE OF THE POLICY

Unless otherwise indicated, The Bar of Ireland owns the copyright and all other intellectual property rights in all text, graphics, information, designs, data and other content forming part of the policy. Where you have signed up to the policy, you and your organisation may not alter or modify the policy.

5. OTHER RIGHTS RESERVED

Except as permitted by (4), or under applicable copyright legislation, you must obtain The Bar of Ireland's prior written consent to distribute externally, sell, adapt, or publish the policy externally.

6. REPRESENTATIONS, WARRANTIES AND DISCLAIMER

To the extent permitted by law, The Bar of Ireland makes no warranty about the accuracy, completeness,

security (including the presence of viruses, malicious code or other harmful components), reliability or appropriateness of the policy. You are solely responsible for the consequences of your use of any policy, including any decision to act or not act on the basis of the policy. The policy does not take into account the particular circumstances of you, your organisation or any third party.

7. THIRD PARTY LINKS

The policy website may contain links to third party sites (Links) over which The Bar of Ireland has no control. These Terms and Conditions do not apply to third party sites and you should review the terms and conditions of the applicable website before using that website. The Bar of Ireland makes no representation or warranty as to, and The Bar of Ireland is not responsible for, the accuracy or any other aspect of the information on any linked third party website. The inclusion of a Link does not imply our endorsement, recommendation or support of the applicable website or any information, opinions, goods or services referred to on it. Links are provided for your convenience only. You acknowledge and agree that any access to and use of linked third party websites is at your own risk and that The Bar of Ireland is not responsible for any losses suffered by you or anyone else in connection with any Link.

8. REVISION OF TERMS & CONDITIONS

The Bar of Ireland may change these Terms and Conditions at any time. The Bar of Ireland wishes to foster and maintain a close working relationship with you and so every effort will be made to consult with stakeholders in advance of any such changes taking place. The Bar of Ireland will also endeavour to provide stakeholders with a reasonable notice period before any such changes take effect. You agree to be bound by the changed terms if you download or use the policy after the terms have changed. Please check The Bar of Ireland's website regularly to ensure you are familiar with the current version. The Bar of Ireland may release the policy under different terms and conditions or stop making available the policy in its sole discretion at any time.

9. PRIVACY

- **a)** You agree that The Bar of Ireland may collect and store personal information provided by you when signing up in accordance with The Bar of Ireland's <u>Privacy Policy</u>.
- **b)** In addition to any permitted use set out in The Bar of Ireland's Privacy Policy, you give The Bar of Ireland permission to collect, disclose and use your personal and company information to:
 - i. track and record the download of the policy; and
 - **ii.** compile reports regarding data and trends.

10. CONFIDENTIALITY AND USE OF REPORTED INFORMATION

The Recipient of the Reported Information undertakes to a Discloser providing information under the policy to treat the Reported Information as confidential, and not to report or disclose the Reported Information other than on an aggregated, anonymised basis.

The Recipient acknowledges and agrees that the Reported Information is confidential and of commercial value to the Discloser and that any disclosure of the Reported Information other than for the Permitted

Purpose in accordance with the terms and conditions may cause damage to the Discloser.

The Recipient undertakes to:

- a) hold the Reported Information in strict confidence and not disclose it or otherwise make it available to any person other than for the Permitted Purpose; and
- **b)** store all Reported Information in a manner that it is protected from unauthorised access or disclosure and must promptly notify the Discloser if it becomes aware or suspects that any Reported Information has been disclosed in a way that is inconsistent with the Permitted Purpose.

DEFINITIONS

For the purposes of the policy and the terms and conditions:

Briefing Entity is a person, corporation, entity, firm, partnership, government or body who recommends or briefs counsel to advise or to appear in Ireland or overseas.

Discloser means a person or other Briefing Entity who provides information to one or more Recipients in connection with the policy.

Recipient means The Bar of Ireland and/or any other Recipient of the Reporting Information reported by a Briefing Entity and/or other Discloser in connection with the policy.

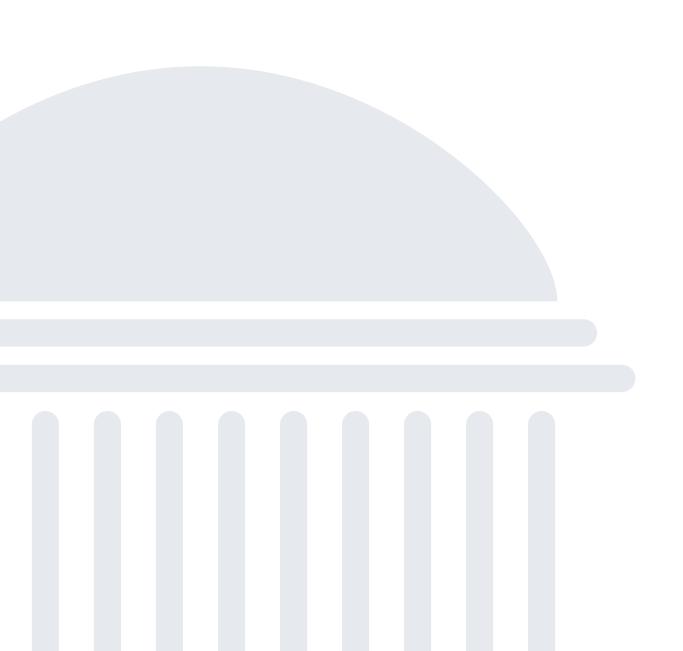
Reported Information means all information reported by a Briefing Entity and/or other Discloser under The Bar of Ireland's Equitable Briefing Policy.

Permitted Purpose means the use of Reported Information by one or more Recipients to promote and advocate for diversity and inclusion in the legal profession in a way which does not reveal the identity or briefing practices of any one particular Discloser or class of Briefing Entities.

CONTACT DETAILS

- a) The Bar of Ireland may contact you or your organisation using the details provided in the application form.
- b) You may contact The Bar of Ireland in relation to the policy, or to request to access, correct or update any personal or company information The Bar of Ireland holds about you by sending any email to <u>equality@</u> <u>lawlibrary.ie</u>
- **c)** Any information or notices issued by The Bar of Ireland to participants will be sent to the email address provided when signing up.

These Terms and Conditions are governed by the laws of Ireland and you irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Ireland.



KEEP UPDATED

SPECIALIST BAR ASSOCIATIONS

The Bar of Ireland houses a number of Specialist Bar Associations (SBA), each a vibrant hub of activity that facilitates the exchange and advance of specialist knowledge and expertise through conferences, seminars, papers and submissions, promoting members of The Bar of Ireland as a specialist provider of advocacy and legal advice services across a range of practice areas. Recently launched Specialist Bar Associations include the Tort & Insurance Bar Association, Financial Services Bar Association, Tax Bar Association and Corporate & Insolvency Bar Association.

Learn more at lawlibrary.ie/sba

FIND A BARRISTER

Find over 2,000 expert counsel on The Bar of Ireland's website with the newly improved 'Find a barrister, mediator or arbitrator' search tool now front and centre. The function comprises more search terms and enhanced access to information about barristers' expertise to enable solicitors and clients to identify suitably qualified counsel more easily.

Find a barrister at lawlibrary.ie



Queries can be addressed to equality@lawlibrary.ie

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