

To:	Legal Services Board	
Date of Meeting:	27 January 2015	Item: Paper (15) 04

Title:	Progress report: diversity data collection and publication	
Workstream(s):	Workforce development	
Author / Introduced by:	Tom Peplow, Regulatory Associate tom.peplow@legalservicesboard.org.uk / 0207 271 0072 Chris Handford, Head of Research and Development chris.handford@legalservicesboard.org.uk / 0207 271 0074	
Status:	Protect	

Summary:

This paper provides the Board with an update on progress with delivery of the objectives set out in our guidance on diversity data collection and transparency (issued in July 2011 under Section 162 of the Legal Services Act 2007). This report has been compiled using publicly available information supported by more detailed discussions with approved regulators.

We invite the Board to consider and discuss our findings which are detailed in the attached report and to agree to the next steps set out at paragraphs 33 to 35.

Subject to the Board's comments, we plan to publish the report in February.

Recommendations:

The Board is invited to:

1. Comment on the content of the report contained in the Annex to the paper
2. Agree to the proposed next steps

Risks and mitigations

Financial: None

Legal:

The Board should note that the statutory guidance has no mandatory status. Approved regulators are free to divert from it if they choose to and can justify their doing so in the context of the regulatory objectives. The Board having regard to the extent to which an approved regulator has complied with statutory guidance when exercising its functions.

Reputational:	The Board should note the potential reputational damage to the LSB were implementation of the diversity guidance to be perceived as a failure
Resource:	None at this stage but were changes to be made to the diversity guidance it would require additional resource and we would need to consider this in the context of other LSB priorities (both in terms of our resources and those of the regulators)

Consultation	Yes	No	Who / why?
Board Members:	X		Anneliese Day and Terry Babbs
Consumer Panel and others:		x	

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Legal Services Board (LSB) report on regulators' progress against LSB guidance on diversity data collection and transparency

Executive summary

1. In the LSB's Business Plan we are committed to continuing to monitor regulators' progress against the LSB's guidance on diversity data and transparency. As with the LSB's previous report on regulators' progress against this guidance¹, the findings of this monitoring are provided in a report structured for general publication rather than a document providing specific direction to individual regulators. There are, however, some comments on the specific actions that certain regulators need to take.
2. It remains early in implementation but having delivered actions where a robust evidence base on diversity in the legal sector is being established, the regulators now need to refine their actions in response to the remaining aims of our guidance. Their analysis and use of the data that has been collected so far, has lacked sufficient statistical sophistication for it to have the level of impact hoped for on the issues identified in our consultation response document². More needs to be done to drive progress on tackling the issues around progression and retention that we have highlighted.

Background / context

3. Encouraging diversity in the legal profession is a specific regulatory objective in the Legal Services Act (the Act), and in our analysis of the regulatory objectives we have made it clear that we will promote diversity and social mobility through our regulatory framework and we expect approved regulators to do the same³. We have also said that delivery of all of the regulatory objectives, not just the objective of encouraging a diverse legal profession, requires a diverse workforce (not just a diverse profession) which reflects the society it serves.

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http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2013/20130930_Diversity_Data_Collection_And_Transparency_Report.pdf

²http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf

³ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

4. The public sector equality duty in the Equality Act 2010 places further responsibilities on the LSB and regulators, requiring all bodies exercising public functions to have regard to:
 - eliminating unlawful discrimination, harassment and victimisation;
 - advancing equality of opportunity between different groups; and
 - fostering good relations between different groups.
5. The legal sector has long established issues with progression and retention that have impacted on diversity at senior levels of the profession. Contrastingly, the profession has a reasonable record with regards to diversity at lower levels and at entry into the profession.
6. Our research⁴ in this area identified a number of obstacles to diversity in the legal profession, on which, despite the strong commitment from and numerous initiatives by professional bodies and others, progress has been disappointing. Some of the most important barriers identified were cultural and therefore not easily or quickly removed, and much more needed to be done to ensure firms and chambers value, develop and retain all of the talent that they recruit.
7. Having acknowledged the LSB and regulators objectives in relation to diversity, and that tackling the challenges in the sector was a long term process and not something solved through the introduction of initiatives alone. The Board recognised the need for regulators to facilitate and incentivise better diversity and identified the need to hold professions, regulators and entities to account for their performance by shedding light on this and shifting responsibility onto decisions makers, that is the firms and chambers making decisions to hire, retain, promote, etc. and allowing consumers to use this information, if they want to, in the same way that information on price or quality is used.
8. In July 2011 the Board issued its guidance⁵ to regulators on diversity data collection across the legal workforce, and the promotion of the transparency of this data at entity level.
9. The two aims of this guidance are:
 - a. firstly, to establish a robust evidence base in the legal profession which allows a proper assessment of the issues to take place, actions to be targeted in the right areas and their impact assessed; and
 - b. secondly, to promote transparency at entity level, thereby creating both a regulatory imperative, but, more importantly, a commercial incentive to take action that widens access and supports progression and retention.
10. In 2013, our first review of regulators' progress in delivering the objectives in the guidance⁶ highlighted that data is now available in a number of areas where none existed before (for instance, information on a number of the protected characteristics defined in the Equality Act 2010 that data was not previously

⁴ http://www.legalservicesboard.org.uk/Projects/workforce_development/index.htm#diversity

⁵ http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/diversity_guidance_final.pdf

⁶ http://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2013/20130930_Diversity_Data_Collection_And_Transparency_Report.pdf

being systematically collected for)⁷, and critically that the concept of collecting and publishing data to stimulate action had been seen to have some value. The review also highlighted that where there had been challenges with this work, the regulators were focusing on how these could most effectively be addressed⁸.

11. Having completed our second review it is clear that it remains very early in implementation, with regulators still only having completed a limited number of full data collection and publication exercises. However, the findings in the previous review can be seen to have been built upon and we are aware that improvements continue to be made in the collection of data by regulators and the disclosure of diversity data, particularly among small and medium sized firms. Regulators have also continued to make good progress in approaching diversity as a regulatory issue

Findings

12. The concept of collecting and publishing data to stimulate action has continued to be seen to have some value by regulators and to be embraced by many in the sector, with the disclosure of data beyond the traditional diversity reporting in the legal profession on gender and ethnicity continuing to be expanded upon.
13. With the exception of the Intellectual Property Regulation Board (IPReg) (who have only published data on gender, ethnicity and disability) all of the regulators have now published data on all of the characteristics in our model questionnaire⁹ and response rates have generally increased.
14. There has been a vast increase in the information available across a range of diversity characteristics. In particular, data on the socio-economic background of legal services professionals has improved greatly. This is of huge importance in understanding and tackling the social mobility challenges in both the legal sector and the wider economy.
15. There are also once more a number of positive examples of the progress that has been made by regulators in approaching diversity as a regulatory issue, for example the Solicitors Regulation Authority (SRA) and the Bar Standards Board's (BSB) published equality strategies¹⁰. A further specific positive example of how the data is being used is provided by the SRA who have introduced a diversity benchmarking tool for firms to use. This allows firms to benchmark themselves against similar firms, provides background information

⁷ The full list of characteristics in our guidance that data should be collected on – professional qualifications if an authorised person in the LSA 2007, role in organisation, age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities.

⁸ The BSB, for example, planned to improve access to their diversity monitoring page via Barrister Connect to encourage greater provision of diversity data by its members and to make it easier for them to provide this information.

⁹ Age, gender, disability ethnicity, religion or belief, sexual orientation, socio-economic background and caring responsibilities

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/diversity_guidance_final.pdf

¹⁰ <http://www.sra.org.uk/sra/equality-diversity/strategy/edi-strategy.page>

<https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-strategy-2013-2016/>

on the data, context for this work and tips on the practical steps firms can take to improve the diversity of their workforce¹¹.

16. As was the case in the first review, this second review has identified a mixed picture among the regulators, particularly in relation to the analysis and presentation of the data that has been collected. There are also once more, a number of positive examples of the progress that has been made by regulators in approaching diversity as a regulatory issue. Full details, including a summary of each regulators response to a request for information on their performance in relation to data collection and publication, response rates and their use of the data, is available on pages 8 to 15 in the report.

Sector wide diversity data set

17. The improvements that have been made with the collection and publication of diversity data also mean that we are now in a position where it is possible to produce a sector wide diversity data set that will be published alongside the report - this is the first time that the raw data collected in response to the diversity guidance by any of the regulators, will be published and available for others to use.
18. To produce this sector wide diversity data set we requested copies of the raw diversity data collected by regulators and are currently in the process of finalising the compilation and analysis of this data. The BSB, Council for Licensed Conveyancers (CLC), Ilex Professional Standards Board (IPS) and SRA were able to provide the raw data needed to us but the Costs Lawyers Standards Board and the Faculty Office were unfortunately not able to provide us with electronic versions of the raw data they had collected, and IPReg have not responded to requests for this information¹².
19. It is our hope that, over time, this data set will develop into an increasingly valuable resource for regulators and others to use in their work to tackle the diversity challenges in the legal sector.

Criticisms of the LSB guidance

20. We have been in contact with the author of an academic paper which has looked into the disclosure of diversity data by the top 100 UK firms since 2010 and is due to be published in early 2015¹³. The paper challenges both the LSB's guidance and the implementation of it by the regulators, particularly focusing on the SRA's implementation. The three main criticisms are:

Criticism	Our response
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¹¹ <http://www.sra.org.uk/solicitors/diversity-toolkit/diversity-toolkit.page>

¹² The data set is therefore heavily reliant on data collected from the BSB, CLC, IPS and SRA and we have not been able to compile as true a cross-section of the professions as we would have been hoped. However, as the SRA data is collected on a firm workforce basis information on all legal services professions has been included.

¹³ Steven Vaughan, 'Going Public: Diversity Disclosures by Large UK Law Firms' (2015) Fordham Law Review (forthcoming)

<p>The guidance was not necessary as data was already being published</p>	<p>Research completed by the author indicates that disclosure by top ten firms has remained the same, however the research also highlights that there has been a considerable increase in the disclosure of data among the 11-25 and 51-100 ranked firms and acknowledges the increased disclosure of diversity data outside of the traditional areas reported on, eg gender and ethnicity. We would suggest that both of these increases are potentially a response to our guidance, there has also been a considerable increase in socio-economic data, and we are interested in the entire sector not just a snapshot of the top 100 firms.</p>
<p>Diversity in legal practice is complex and not easily amenable to change via a reporting rule; there is little evidence that reporting rules have significant impact on the behaviours of regulatees; and clients will not hold firms to account</p>	<p>It is acknowledged in the academic paper that it is too early to form a definitive view on the impact of our guidance. We agree with this and have also consistently been clear that we do not expect reporting and transparency alone to be the whole answer to the diversity challenge but regard evaluating the impact of existing initiatives as a priority, as well as the need for data to be available at the level at which decisions on recruitment, promotion and retention are made (which is currently not commonly the case), in order to be able to drive the changes needed and tackle the cultural challenges that need to be addressed</p>
<p>The implementation of the guidance leaves much to be desired with the data presented by regulators being blunt, lacking statistical sophistication and little having being done with it</p>	<p>Again the academic paper acknowledges it is early days and also states that we have been clear that we expect regulators to do more than merely collect and publish basic aggregated data. As said above, we have consistently been clear that we do not expect reporting and transparency alone to be the whole answer and believe regulators need to do more than merely collect and publish basic aggregated data. We would, however, largely echo the author's concerns about the regulators' presentation and analysis of diversity data where we consider there is more that can be done to deliver the aims of our guidance. Our publishing of the raw data that is being collected may also help trigger further action in this area.</p>

21. Along with the SRA, we have provided the author with comments on his paper which have been reflected in the final version of the paper submitted for publication. In particular, that it may be too early to form a definitive view on the impact of our guidance and that it is offered by regulators as only part of a response to the issues and not a panacea.
22. In response to our comments, the author has also applied for funding to conduct a number of interviews with law firm partners and diversity managers on the extent to which they feel different/feel that they have more responsibility for

diversity, post the introduction of our guidance – to help in obtaining this funding, we have provided the author with a letter of support for this research.

23. Early findings from the LSB's cost of regulation survey have suggested that a number of respondents to the survey have identified diversity reporting as a key regulatory burden. This may in part be explained by regulators refining their approach to data collection in the early stages of their implementation of the guidance and a lack of efficiency in these early processes. In addition to the timing of diversity data collection exercises and the running of the cost of regulation survey which may have led this to be at the forefront of respondents minds - a number of smaller regulators next data collection exercises will be completed over two years after the previous one was completed.

Second review - report

24. While, as they have not yet been published, we have not directly made reference to the criticisms above we have emphasised in the report on our second review, that:
 - a. it remains early in the implementation of our guidance and that we do not expect the collection and publication of aggregated data alone to deliver the changes necessary in the sector;
 - b. there have been improvements in the disclosure of diversity data and the range of diversity characteristics data is now available on (in particular the significant increase in data available on the socio-economic background of legal services professionals); and
 - c. the need for regulators to review the action plans they developed to implement our guidance and ensure they are doing all that they can both analytically and presentationally to deliver its aims
25. A focus of the report is the need for regulators to do more both analytically and presentationally with the data to ensure that firms and chambers are accountable for their decisions on recruitment, promotion and retention, and the cultural values impacting on this.
26. The report on the second review also highlights a need for non-entity regulators in particular (who are not therefore so concerned with the guidance's aim of ensuring transparency at firm or chambers level and the creation of commercial incentives to take action), to evaluate the burden their implementation of our guidance is having against the value of the aggregated data they are collecting. As they now have a much better, evidence-based, understanding of how, and how quickly, their regulated communities are changing, they should now have an improved understanding of the frequency of aggregated data collection required to accurately assess trends, risks and the impact of initiatives.
27. The report also recommends that thought is given to the potential for regulatory overlap in multidisciplinary practices, and the potential for multiple data collection exercises due to the involvement of different regulatory bodies. Increased sharing of information between regulators is suggested, such as that which has occurred between IPS and the SRA, as well as joined up data collection exercises.

Conclusion

28. Regulators' analysis and use of the data that has been collected so far, has lacked sufficient statistical sophistication for it to have the level of impact hoped for on the issues identified in our consultation response document¹⁴. Having successfully implemented the action plans they developed in response to our guidance and made the progress that they have done, we have suggested that it is now necessary for regulators to reflect on how the data they are collecting can be used to most effectively deliver the aims of our guidance.
29. The report is structured for general publication, rather than providing specific direction to individual regulators, but it does include some specific actions for certain regulators, and make it clear that the LSB believes all of the regulators need to consider how the data they are collecting can most effectively be used, both presentationally and analytically, to highlight the diversity challenges in the sector and to help tackle the long term issues with progression and retention.
30. The report also suggests they consider the approaches taken by other bodies working in this area¹⁵ and to do more to increase the impact of the data being collected in tackling the long term issues with progression and retention in the legal sector – for example, ensuring that information is collected and made available at the level at which decisions on these issues are made.
31. It is important for the LSB and regulators to continue to view the diversity challenge within the wider risk framework to ensure it continues to be given appropriate priority and resource allocation. The regulatory objectives and public sector equality duties in the Equalities Act obviously adds to the significance of general equality law, and the LSB has long argued (along with others such as Lord Neuberger) that the public interest in a diverse judiciary requires a diverse legal profession.
32. However, there is also a strong case for many other priorities and just as regulators need to balance these, the LSB must be realistic at the pace of change that can be expected with this longstanding challenge to the profession. This is not to avoid or downplay the importance of diversity, but to recognise that while keen to see progress the LSB must be realistic as to the speed change can happen at.

Next steps

33. Each of the regulators has a clear timetable for the next round of data collection which we expect them to meet. However, there are lessons to be learned and in our ongoing monitoring we will focus on regulators plans to drive progress in tackling the obstacles to diversity in the sector by:

¹⁴http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf

¹⁵ Diversity data reporting

Level of granularity and qualitative data found in the Law Society's reports -

<http://www.lawsociety.org.uk/policy-campaigns/research-trends/annual-statistical-reports/> and <https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-inclusion-charter/>

ONS work on diversity - <http://www.ons.gov.uk/ons/about-ons/who-ons-are/diversity/index.html>

- Continuing to improve response rates and compliance;
 - Using the data in the wider regulatory toolkit and risk assessment; and
 - Improving the analysis and presentation of data and therefore its usefulness.
34. To ensure consistency is maintained, we do not intend to make any changes to the statutory guidance at this stage in its implementation and the table on page 7 of the report will continue to provide the basis by which we will review their progress following the completion of their next data collection exercises.
35. Should any significant concerns arise in our ongoing monitoring of regulators' progress, we will consider the appropriate route to deal with the issue through our regulator performance and oversight work programme. This could, for instance, potentially result in the LSB undertaking a thematic review on a particular issue.