

To:	Legal Services Board	
Date of Meeting:	8 September 2016	Item: Paper 16 (55)

Title:	Diversity – the role of regulators in driving improvement	
Work stream(s):	Performance, evaluation and oversight	
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Status:	Official	

Summary:

In March 2016, the Board considered a report that detailed the regulators' progress on diversity work compared to the guidance the LSB issued in 2011. The report found that while all regulators are now collecting data in line with the guidance, not all are using this information to inform policy decisions throughout the regulator.

At the same meeting, the Board also agreed that it was an appropriate time to review the 2011 guidance to underline the LSB's leadership role in this area. The 2011 guidance was too input focused, and did not reflect the LSB's current approach to regulation. As such, the Board agreed that new guidance with a refreshed focus on outcomes should provide an impetus to the regulators so that they consider the diversity data they collect when carrying out their work.

Annex A contains a consultation document inviting stakeholder views on proposed changes to the guidance on diversity data collection the LSB issued in 2011.

Meetings and discussions with the regulators over the last year indicated that a review of the 2011 guidance would be beneficial to the regulators and we have carried out pre-consultation engagement with regulators. This was to gather their views on what in the current guidance should be maintained, and what they would like to change. We also consider that amended guidance with a focus on outcomes supported by a more detailed evidence framework, would provide a solid foundation for formally assessing regulator performance on diversity in the future.

Recommendation(s):

The Board is invited to:

- Note the draft consultation and proposed guidance for regulators on encouraging a diverse profession.
- Agree the approach set out in the consultation document and proposed guidance.

Risks and mitigations

Financial: N/A

Legal:

We have a statutory objective to encourage a diverse legal profession. Stakeholder views differ as to the extent to which that objective justifies the imposition of regulatory obligations. We have worked with the legal team to ensure all work is in line with our powers under the Legal Services Act.

Reputational:

If the guidance is not reviewed through this consultation, there is a risk that the LSB will not be effectively performing its leadership role.

Some stakeholders may be concerned by how broad the changes are in the proposed guidance, and may consider this increases regulatory burden. The messaging accompanying the consultation and final guidance should emphasise that this update will allow regulators to explore their own initiatives and remove unnecessary prescription.

Resource:

Diversity features in the proposed LSB business plan for 2016/17. The proposed course of action set out in this paper would be undertaken within the resources that have been set aside.

Consultation	Yes	No	Who / why?
Board Members:	X		During the course of the project, the team has spoken to Jemima Coleman and has also held a Project Session with the Chair.
Consumer Panel:		X	
Others:			

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
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Annex A	Section 22 – draft for future publication	
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LEGAL SERVICES BOARD

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Date of Meeting:	8 September 2016	Item: Paper 16 (55)

Diversity: Diversity – the role of regulators in driving improvement

RECOMMENDATIONS

1. The Board is invited to:
 - Note the draft consultation and proposed guidance for regulators on encouraging a diverse profession.
 - Agree the approach set out in the consultation document and proposed guidance.

BACKGROUND

2. Encouraging diversity in the legal profession is a specific regulatory objective in the Legal Services Act 2007 (the Act). We have made it clear that the LSB will promote diversity and social mobility through our regulatory framework and we expect approved regulators to do the same.¹
3. 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.
 - Fostering good relations between different groups.²
4. In July 2011 the LSB consulted on and issued guidance for regulators on the collection and use of data on the demographic make-up of the legal services workforce.³
5. In May 2016, the LSB published a report that detailed each regulator's progress since the publication of the 2011 guidance.⁴ The report found that while some regulators have used the data they have collected to implement changes across their regulatory activities, others have merely collected the data and not used it to further inform their work. These findings, supported by a positive attitude from the regulators at a round table with them, led the Board to agree to a review of the 2011 guidance.

¹ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

² The Master of Faculties is not named in the public sector equality act, but is still subject to it.

³ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf

⁴ http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/pdf/20160525_Diversity_And_The_Legal_Services_Regulators.pdf

6. The Board has also agreed, in April 2015, to develop a long term strategy for embedding diversity into the regulatory standards used to judge the performance of the approved regulators. We view the new guidance as the first step to delivering a performance assessment on diversity issues.
7. We have offered all regulators the chance to provide feedback on the current guidance prior to the formal consultation process. We have used their responses to inform our work in formulating the new guidance.

PROPOSED CHANGES

8. The report the Board considered in March made it clear that the diversity guidance initially issued in 2011 needed to be reviewed to ensure the LSB maintained its leadership role in this area. The guidance the Board set out for the regulators in the 2011 document is largely input based, and focused on how regulators should approach collecting diversity data.
9. Since that guidance was issued, the extent to which the regulators have built on that guidance and used the information collected has differed greatly varying from complying with the guidance and collecting data in its simplest form to more comprehensive implementation of policies and processes based on this data.
10. The LSB's change in approach to favour outcomes focused regulation is reflected in the more recent guidance we have issued in other areas. As such, it makes sense to, as part of this work, bring the guidance for diversity monitoring into line. This decision is reaffirmed by the evidence that prescriptive guidance on data gathering has not led to all regulators fully embracing the importance and worth of the information they are collecting. The proposed approach should allow sufficient freedom for all regulators to improve their work on encouraging the diversity of the profession and, given that any renewed guidance will provide a framework for an ongoing performance assessment, should make it clear to the regulators how important the LSB considers work on diversity to be.
11. It is intended that the outcome of this consultation (Annex A) will be a new piece of guidance that allows regulators to develop their own approach to diversity issues. We intend to maintain the requirements for regulators to collect the data they are already collecting, but we aim to give them more freedom to explore the way in which they use the information to improve the situation in their respective professions.
12. The proposed guidance is broader than the input based document that was issued in 2011, and there is a possibility that this could be viewed as increasing regulatory burden. We would not agree. We consider that the developments proposed in this consultation are a proportionate and outcomes-focused intervention that supports regulators in their work to deliver the regulatory objectives and encourage a diverse profession. An important part of this project will be the messaging that accompanies the consultation and any final guidance

to emphasise that this update is designed to allow regulators more freedom to explore their own initiatives and remove unnecessary levels of prescription.

13. The proposed guidance is based around four outcomes:

- 1) The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (at entry and throughout careers), how this changes over time and where greater diversity in the profession needs to be encouraged;
- 2) The regulator uses data, evidence and intelligence about the diversity of the profession to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities;
- 3) The regulator collaborates with others to encourage a diverse profession, including sharing good practice, data collection, and other relevant activities;
- 4) The regulator accounts to its stakeholders for its understanding, its achievements and future plans to encourage a diverse profession.

14. Along with these outcomes, in the draft guidance we have provided regulators with some illustrative examples of evidence that a regulator might use to demonstrate achievement of the outcomes. We will also encourage regulators to find their own ways of demonstrating progress against these outcomes and will explore this at consultation.

15. In line with allowing the regulators more freedom to develop their own, targeted approaches, we also propose removing specific references to the model questionnaire for data collection from the revised guidance. At present, regulators have to provide the LSB with justification for any deviation from the guidance and the questionnaire. This process is not aligned with our intention to encourage the regulators to take more responsibility in developing their own initiatives, and the process would appear to be more proportionate if this process was removed.

16. After allowing regulators an appropriate amount of time to embed the work to achieve these outcomes into their general regulator activity, we will review the operation of this guidance and the progress that regulators have made. Thereafter, we envisage on-going monitoring of regulator performance in this area to be carried out through a formal performance assessment activity.

17. The proposed guidance includes a commitment to review regulators' progress in August 2018. This reflects the commitment made by the Board in April 2015 (see para 6 above), plus a desire to provide regulators with clarity about our future intentions with respect to the new outcomes. Based on feedback from regulators in other areas, we have deemed it necessary to allow regulators sufficient time to adjust their activities to begin delivering the outcomes. For some regulators, it may take longer to make these changes as they manage resource and other regulatory priorities. For this reason, we have allowed at least 18 months between publication of the new guidance and any work we do with the regulators

to review the impact of the new guidance (assuming publication of the new guidance in February 2017).

NEXT STEPS

18. Subject to the Board's approval of the policy positions presented in the consultation paper at Annex A, we will publish the consultation and proposed new guidance. We intend to consult for eight weeks starting in mid-late September 2016. A letter to the regulators' chief executives of the regulators at the launch of the consultation will note the proposed change in approach and set out our justifications for moving away from the prescriptive-based current guidance model. We will also explain the deadline by which we expect regulators to have started working towards the achievement of the outcomes (August 2018).
19. Following the conclusion of the consultation, we will return to the Board with a proposed decision document and final guidance. This decision document will reflect the representations made to us, and highlight areas where we have felt the need to change the guidance we initially proposed following the feedback we received.