

To:	Legal Services Board	
Date of Meeting:	23 March 2016	Item: Paper (16) 17

Title:	Diversity: Developing assessment of regulators' progress
Work stream(s):	Protecting consumers and the public interest
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Status:	Unclassified
Recommendation(s):	
<p>The Board is invited to:</p> <ul style="list-style-type: none"> • Note the draft report at Annex B on regulator progress, initiatives in other sectors and proposals for future assessment of regulatory performance. • Agree to renew 2011 guidance as a forerunner to developing a future performance assessment. • Delegate sign-off of final report for publication to Chair and Chief Executive. 	

Summary:
<p>In March 2015, the LSB reviewed the regulators' progress against the guidance it issued in 2011. This review found that a more robust evidence base on diversity had been developed since the guidance had been issued. However, the regulators' analysis and use of the data collected "lacked the statistical sophistication necessary for it to have the level of impact hoped for on the issues identified in [the] consultation response document." Following this in April 2015, the Board agreed to develop a strategy for embedding diversity into the regulatory standards used to judge the performance of the approved regulators.</p> <p>We have carried out a programme of work over the last six months, including a review of the regulators' progress on diversity work and research on initiatives in other sectors. This work is reported at Annex B.</p> <p>This work has confirmed our view that the regulators' progress on diversity work varies between the regulators from strictly complying with the guidance the LSB issued in 2011 to a more wide reaching programme of work.</p> <p>Meetings and discussions with regulators over the last six months indicate that a review of the LSB 2011 guidance would be welcome, and would provide a solid</p>

foundation to assessing regulatory performance in the future and maintaining our leadership role on improving diversity in the legal sector.

We do not envisage a review of the guidance being resource intensive, either for the LSB or the regulators, and subject to the Board's decision could be completed in the first quarter of the 2016/17. The review would reflect the LSB's approach to oversight regulation and set out relevant outcomes for the regulators.

Note: the focus of this paper is regulators' activity with respect to the issue of diversity. It does not report on the diversity of the legal services sector. This information is being compiled and analysed as part of the ongoing market evaluation project, due to report in May/June 2016.

Risks and mitigations

Financial: N/A

Legal: We have a statutory objective to encourage a diverse legal profession but there remains a risk that stakeholders' views will differ as to the extent to which that objective justifies the imposition of regulatory obligations. We will work closely with the legal team to ensure all work is in line with our powers, as per the act.

Reputational: If the guidance is not reviewed, there is a risk that the LSB will look out of step, and not effectively performing its leadership role.

Resource: Diversity features in the proposed LSB business plan for 2016/17.

Consultation	Yes	No	Who / why?
Board Members:	X		During the course of the project, the team has spoken to Anneliese Day 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
Cover paper – Para 13 and table	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for the purposes of deliberation	
Annex B	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Diversity: Developing assessment of regulators' progress

Background

1. 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 we will promote diversity and social mobility through our regulatory framework and we expect approved regulators to do the same.¹
2. 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.
3. The legal sector has long established issues with progression and retention that have impacted on diversity at senior levels of the profession. However, the profession has a better record with regards to diversity at more junior levels and at entry into the profession.
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, this guidance can be found in Annex A. A review of regulators' progress against this guidance was carried out in March 2015 and found that while a more robust evidence base on diversity had been developed since the initial guidance was issued, the regulators' analysis and use of the data collected lacked the statistical sophistication necessary for it to have the level of impact hoped for on the issues identified in [the] consultation response document'.²
5. In April 2015, the Board agreed to develop a long term strategy for embedding diversity into the regulatory standards used to judge the performance of the approved regulators. This paper and the report at Annex B lays the foundations for this work.

2015/16 work

6. Our diversity work for 2015/16 had three main objectives. These were to:
 - Develop the LSB's understanding of regulators' progress in using the diversity data to further the regulatory objectives.

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

² <https://research.legalservicesboard.org.uk/wp-content/media/Diversity-data-collection-and-transparency.pdf>, p.3.

- Inform the LSB's approach to future development of methods to assess regulatory performance in the area of diversity.
 - Highlight good practice in use of diversity data both within and outside the legal services sector.
7. Legal services regulators have made some progress on collecting appropriate demographic data for the professions which they regulate. Our work in 2015/16 has shown that all have collected some data, and that most have started to investigate the data and the reasons behind it.
 8. Regulators were invited to share what they had done with the diversity data they had collected with regards to policy development, whether it had informed day-to-day processes of the organisation, what the challenges were in collecting and using the data and what plans there were for further development in the future. Findings of this work can be found in Annex B.
 9. The extent of the work being done by the regulators in this area ranges from strict compliance with the LSB guidance to a more wide reaching programme of work.³ Some regulators have collected the data but have not conducted any further analysis. In other cases, regulators have been more engaged with the initiative and have used the data and analysis to begin developing regulatory policy and evaluations of their regulatory functions. Other examples of progress include working with other organisations, both within the legal sector and outside. Some have also reviewed operational policies, such as using the latest evidence to ensure that language testing standards were appropriate and encouraging departments to draw on diversity data to pick out where changes may have a negative or positive impact as part of a risk assessment.
 10. The results of this work show that, while the 2011 guidance (Annex A) helped encourage the regulators to begin data collection, it has not been as effective at encouraging all of them to carry out analysis on the data or to investigate the reasons for the results and begin further work. The requirements in the guidance are largely input based and prescriptive in the work it required. More recently, we have changed our approach in order to be more outcomes focused and risk-based in our requirements both when specifically assessing regulator performance and more generally. Furthermore, much of the work outlined in the 2011 guidance has been carried out, and the deadlines (for instance the end of 2012 for meeting the detailed expectations) have now passed.
 11. As part of the project, we held a Diversity Forum with colleagues at all the frontline regulators. Discussions at the Forum were supportive of our work, and the regulators suggested they would find a review and possible renewal of the 2011 guidance helpful. The LSB could use this as an opportunity to raise the standards of work, as well as encourage further collaboration amongst the regulators regarding best practice and lessons learned. The review of the 2011 guidance should not be a resource intensive exercise, and subject to the Board's decision could be completed early in 2016/17. This would allow us to start work on developing a method of performance assessment for the rest of the year.

³ It should be noted that the larger regulators have resource dedicated to diversity issues, whereas the smaller ones carry out this brief as part of their 'business as usual' work. While we do recognise this, there is still scope for improving the performance of many of the frontline regulators.

12. The report in Annex B also summarises desk research carried out on diversity initiatives in other sectors, and sources of good practice from the regulators of these areas. There is a small number of examples or case studies of good practice in relation to the use and analysis of demographic data. There are also other areas of good practice when addressing diversity issues. As mentioned above, legal services regulators are subject to two statutory requirements that set out the need for a focus on improving diversity. Our work will look for examples of best practice, and take into account the progress in other sectors.

13. [REDACTED]

[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Future work

14. Given the range of quality and quantity of work the regulators have carried out in the past five years, we propose to change our approach with the regulators. The review of the 2011 guidance and the positive attitude of most of the regulators at the recent Forum represents an opportunity for us to take our leadership in this area forward and raise our expectations of regulators' performance.

15. The review of the guidance should be seen as a precursor to an on-going performance assessment for the monitoring and evaluation of diversity within the respective regulated communities. We would not be able to effectively assess the regulators' performance without a fundamental review of the guidance. This could either take place as a separate standalone assessment, or potentially more sensibly be fed into the regulatory standards performance assessment. In order for this to be as effective as possible, we should first review the guidance and set out our expectations as a framework by which to hold the regulators to account.

16. As part of this proposed assessment, we would be required to consult the regulators on what information they would expect to supply in order to demonstrate their performance on diversity issues.

⁴ <https://research.legalservicesboard.org.uk/wp-content/media/Diversity-data-collection-and-transparency.pdf>, p. 18.

Next steps

17. Subject to the Board's discussion and decisions, we propose contacting the regulators to outline the scope of this work and its profile over the coming 12 months.
18. With the Board's approval, we also intend to publish Annex B as a report in the near future.

Annex A

GUIDANCE ISSUED BY THE LEGAL SERVICES BOARD TO APPROVED REGULATORS ON GATHERING AN EVIDENCE BASE ABOUT DIVERSITY ACROSS THE LEGAL WORKFORCE AND PROMOTING TRANSPARENCY AT ENTITY LEVEL

July 2011

INTRODUCTION

The provision of Guidance

1. Section 162 of the Legal Services Act 2007 (the 2007 Act) allows the Board to give Guidance:
 - a. about the operation of the 2007 Act and any order made under it
 - b. about the operation of any rules made by the Board under the 2007 Act
 - c. about any matter relating to the Board's functions
 - d. for the purpose of meeting the Regulatory Objectives
 - e. about the content of licensing rules
 - f. about any other matters about which it appears to the Board to be desirable to give Guidance.
2. Guidance under s.162 may consist of such information and advice as the Board considers is appropriate. The Board will have regard to the extent to which an approved regulator has complied with this Guidance when exercising its functions.

BACKGROUND

3. The LSB published a consultation document entitled 'Increasing diversity and social mobility in the legal workforce: transparency and evidence' on 15 December 2010. In July 2011 it published its decision document. This Guidance forms part of that decision document.

APPLICATION OF THE GUIDANCE

4. The Board considers that the information provided here gives sufficient clarity as to the delivery of the expectations that the LSB has set out, whilst allowing an appropriate degree of discretion for approved regulators to decide how best they can be achieved.
5. Section 162(5) of the 2007 Act says "when exercising its functions, the Board may have regard to the extent to which an approved regulator has complied with any Guidance issued under this section which is applicable to the approved regulator".
6. The LSB will examine the extent to which, in delivering the LSB's expectations, an approved regulator has followed the approach set out in this Guidance. Approved regulators will be asked to report back to the LSB with evidence as to how they have delivered the expectations.
7. The Guidance sets out the issues that approved regulators may wish to take into account in assessing how they will deliver the expectations. There are a number of alternative ways in which these expectations could be delivered and the Board

expects each approved regulator to have available evidence to support its choice of approach. This evidence would need to be persuasive, reasonable and present the regulatory rationale. Section 28 of the Act imposes a duty on each approved regulator, so far as is reasonably practical, to act in a way which it considers is most appropriate for the purpose of meeting the regulatory objectives.

GUIDANCE ON DATA COLLECTION AND PUBLICATION

8. This document provides Guidance for the delivery of the expectations which have been identified by the LSB for approved regulators, for the purpose of meeting the regulatory objectives, and, in particular, encouraging an independent, strong, diverse and effective legal profession. These expectations relate to the collection and publication of diversity data at the level of individual firms and chambers.
9. By January 2012 approved regulators should submit to the LSB their finalised detailed plans setting out how they intend to deliver our expectations, and begin implementing them no later than March 2012. The expectations should be achieved by approved regulators by the end of 2012.
10. The Board recognises that there is flexibility in the method or approach that each approved regulator chooses to adopt when meeting the expectations, which may result in a departure from this guidance.

DELIVERING THE EXPECTATIONS

11. Approved regulators should demonstrate how the expectations will be delivered. This is because the Board considers that the expectations are necessary to meet the Regulatory Objective about encouraging diversity (and the regulatory objectives more broadly) through:
 - a. gathering an evidence base about the composition of the workforce to inform targeted policy responses and to be used as a benchmark to evaluate the effectiveness and impact of existing diversity initiatives
 - b. promoting transparency about workforce diversity at entity level as an incentive on owners/managers to take action (both in terms of 'peer pressure' and better information for corporate and individual consumers and potential employees, which they can use to inform their choice of law firm).
12. The suggested approach is likely to include, but need not be limited to:
 - a. The approved regulators requiring firms and chambers to conduct a diversity monitoring exercise which will give every individual in their workforce (both lawyer and non-lawyer), an opportunity to self-classify against the following characteristics: age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities.
 - b. To ensure consistent data categories across the different branches of the legal profession, it is suggested that approved regulators recommend that regulated entities adopt the model questionnaire set out in this Guidance. This will allow the data to be aggregated and used to build a picture of the diversity profile of the legal workforce as a whole.
 - c. Where approved regulators regulate entities, the approved regulators should require firms and chambers to publish summary data about their workforce in relation to all the characteristics listed at 12 a. above, except sexual orientation and religion/belief:

- i. to ensure consistent data categories for the publication requirement it is suggested that the approved regulators provide firms/chambers with a template for publication which includes a breakdown of the data by levels of seniority
 - ii. we recommend the approved regulators make provision about arrangements or conventions on the reporting and publication of summary data which should, where practicable, be consistent across approved regulators.
- d. The approved regulators to collate firm and chambers level diversity data and publish to give an aggregate view of the diversity make-up of each branch of the profession.
 - e. The approved regulators to include a description of their approach to the periodic timing of collection and publication of firms and chambers information, for example if this should be repeated annually, bi-annually, or every three years. This should take into account the regulatory and administrative burden of the exercise and change within the profession.

JUSTIFYING A DEPARTURE FROM THE GUIDANCE

13. Each approved regulator that departs from this Guidance should be able to justify its approach. To justify an approach, the Board would expect an approved regulator to establish evidentially the extent to which it has concluded that the departed approach is the most appropriate way of acting compatibly with the Regulatory Objectives and is in accordance with the Better Regulation Principles and regulatory best practice. This assessment is likely to include, but need not be limited to, consideration of:
- a. an outline of the alternative approach and how it differs from the guidance
 - b. a description of how the alternative approach meets the expectations
 - c. a description of the risks associated with the alternative approach in that the expectations may not be met and how are these risks are being mitigated
 - d. a justification of why the alternative approach has been adopted in favour of the approach set out in the guidance
 - e. a summary of the potential benefits to the approved regulator in terms of resource and administration burden due to adopting the alternative approach
 - f. a summary of the potential impacts both positive and negative on the entity from adopting the alternative approach
 - g. any evidence through pilots that supports the adoption of the alternative approach.
14. The Board considers that such justification needs to set out clearly how the expectations will be delivered.