

Encouraging a diverse profession

Self-assessment by Legal Services Board

December 2017

Introduction

1. The LSB shares with the regulators a regulatory objective to encourage an independent, strong, diverse and effective legal profession. Delivery of the regulatory objectives in the Legal Services Act 2007 (the Act) requires a diverse profession, which reflects the society that it serves – one that understands and can respond to the differing needs of a disparate range of clients. A diverse legal workforce will better lend itself to innovation, and better meet consumers' legal needs and limit wasted talent.
2. In 2011 we demonstrated our commitment to this issue through publication of statutory guidance to regulators on data collection about the diversity of the legal workforce. We know that regulators, firms and representative bodies share this commitment, recognising the business and wider benefits of a diverse profession. Many have introduced initiatives to allow the widest possible talent pool to access legal careers at all levels in the sector.
3. In February 2017, following consultation with the regulators and other stakeholders, the LSB revised this statutory guidance, changing our approach to give it a renewed focus on outcomes. The updated guidance offers the regulators more freedom to develop targeted approaches to encouraging diversity within their respective professions.¹ There are four outcomes in the revised guidance:
 - i. The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time and where greater diversity in the workforce needs to be encouraged
 - ii. The regulator uses data, evidence and intelligence about the diversity of the workforce to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities
 - iii. The regulator collaborates with others to encourage a diverse workforce, including sharing good practice, data collection, and other relevant activities
 - iv. The regulator accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse workforce.

¹ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20170215/2017_Encouraging_A_Diverse_Workforce.pdf

4. When we published the guidance, we made a commitment to assess the LSB's approach to encouraging a diverse workforce against the outcomes in the new guidance. This paper reports on our self-assessment.

Our approach to self-assessment

5. The outcomes in the revised guidance are primarily for frontline regulators, and so not all of the aspects of the guidance are directly applicable or relevant to the LSB's oversight role. Wherever possible, however, we have provided examples of where our work has supported the delivery of a more diverse workforce. We have also considered internal processes and functions that demonstrate our commitment to diversity. Under each outcome, we have identified future actions the LSB can take as it looks to develop its work in this area.

Outcome 1: *The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time and where greater diversity in the workforce needs to be encouraged*

6. In considering this outcome, we have looked at our work specifically on diversity and the wider market-monitoring activities we undertake as part of our oversight role. We also considered our diversity work since 2015 to assess to what extent we understand good practice by the regulators in this area, and the impact their work is having on the profile of the workforce.

Assessment

7. In July 2016, the LSB published its Market Evaluation. This report sought to assess to what extent the Act is achieving the desired long-term market outcomes associated with the regulatory objectives and the areas that require more progress.² One of the indicators that report considered was "does the diversity of the professions match the diversity of society?"
8. The Market Evaluation found:
 - at entry-level the profession was broadly comparable to the population of England and Wales but it was not representative at senior levels. Where data was available, it only suggested there had been minimal changes over time. It also said that if the current trends continued it would be decades before parity at the most senior levels.
 - whilst there were been significant increases in the proportion of women entering the legal profession and small increases in the proportion of women in the profession overall, the profession remained disproportionately male compared to the UK population as a whole, particularly at senior levels.
 - in 2013/14, 34% of Legal Practice Course students and 16% of pupils in the first six months of their pupillage were from Black, Asian or minority ethnic groups (BAME). However, the proportion of BAME practitioners was still below that of

² Legal Services Board. 2016. *Evaluation: Changes in the legal services market 2006/07–2014/15*. Available at: <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report.pdf>

the UK population (again, particularly at senior levels), and there had only been a small increase over the past 10 years.

- throughout the regulated professions, the proportion of individuals with a disability was very low (1–2%), compared to the ONS 2011 UK estimate of 16%. Some professions experienced very low disclosure rates for disabilities.
 - individuals who had attended independent or public schools were overrepresented in the legal profession compared to the overall school age population.
9. These reports provide a benchmark from which we can monitor changes in the composition and diversity in legal services. Our commitment to data collection and publication is essential to building the sector's understanding of the diversity profile of the professions.
 10. During 2015/16, we spoke to the regulators and collated a report on how they had used the 2011 LSB guidance to develop their approaches to diversity, and to what extent they had moved beyond purely data collection, and had used the information gathered to inform their regulatory processes. Our report found that while all regulators were collecting data in line with the guidance, not all were using this information to inform policy decisions and other work.³

Future actions

11. The LSB will maintain the ability to monitor diversity trends over time, through future Market Evaluations; the next evaluation is due to be undertaken in 2019.
12. As the regulators begin to develop different routes to qualification, and with the growth in alternative business structures, the LSB will also work towards understanding the diversity of the wider workforce in legal services (regulated persons), and not just the profession (authorised persons).

Outcome 2: *The regulator uses data, evidence and intelligence about the diversity of the workforce to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities*

13. For this outcome, we looked at how we have used the information collected by the regulators since 2011 to inform the work the LSB itself has done. We demonstrate our work towards achieving this outcome by showing how this evidence has led to us changing our approach to diversity. We also considered our own internal processes, such as in tendering for research work and recruitment, to ensure we are appropriately considering diversity throughout all our work.

Assessment: regulatory activities

14. In February 2017, we published revised guidance for legal services regulators for encouraging a diverse workforce (see paragraph 3). This revision built on work undertaken by the regulators against the LSB's initial guidance published in 2011.

³ http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/pdf/20160525_Diversity_And_The_Legal_Services_Regulators.pdf

15. In August 2017, six months after the publication of the revised guidance, we contacted the regulators for an update on work that has been done, or planned, up to that point. From these updates, we compiled a report that identifies progress made against the four outcomes within the guidance. It also identifies areas of good practice to facilitate learning and sharing. The report provides an indication of our expectations for the formal review planned for August 2018.
16. Beyond our statutory guidance, diversity is a key pillar for the LSB across policy work streams. One Board Member has specific responsibility for diversity issues and provides strategic support to colleagues' work.
17. LSB project initiation documents describe how a project will have regard to issues relating to equality and diversity. The LSB does not always record diversity data when carrying out its own research on the legal services workforce. We use regulator data to formulate our own view of the sector, and see little value in duplicating the collection of this data. As mentioned above, we use this information in our Market Evaluation.
18. We engaged with both the SRA and the BSB on their proposals for changing their training arrangements for prospective lawyers. The BSB initially proposed changing the minimum qualification grade for the Bar Professional Training Course from a 2:2 to a 2:1, and we encouraged them to consider the diversity impact of their changes. It has now decided against this change.
19. When considering rule change applications, we give specific regard to the impact rules might have on diversity. For example, in our assessment of a rule change around the changes to the pass mark of the Bar Course Aptitude Test we were particularly interested in how the BSB had considered the disproportionate impact on BAME students, and how it planned to address the imbalance it found. Separately we recently approved a BSB rule change that required chambers to offer flexible parental leave enabling a member of chambers to maintain their practice and support their income while on leave. Our assessment reviewed the likely positive impact of encouraging a diverse profession.
20. We recently reviewed the process for assessing the regulators' performance. In this, we have suggested a number of ways the regulators work on diversity could form evidence of work towards meeting our standards. A better understanding of diversity through the regulatory performance assessment will allow us to see how regulators are using the LSB diversity guidance, and ensure our guidance enables regulators to continue working towards making improvements.

Assessment: corporate activities

21. The LSB is a public body and must publish information to demonstrate compliance with the Equality Duty.⁴ The specific duties require us to publish relevant, proportionate information demonstrating compliance with the Equality Duty. We include reference to our statutory equality responsibilities in every Business Plan,⁵ and our Annual Report and Accounts refers to these responsibilities.
22. We are consulting on revised equality objectives as part of our consultation on our Strategy for 2018/2021. We have reviewed our equality objectives to ensure that they

⁴ The LSB is listed in Schedule 1 of The Equality Act 2010 (Specific Duties) Regulations 2011

⁵ For example our [business plan for 2017-18](#)

remain appropriate. We have decided to revise our objectives to achieve greater alignment with the outcomes that we have set out for regulators in our 2017 guidance for regulators.

23. When tendering for work, the LSB sets out the criteria by which we assess bids; this includes specifying that we will consider ‘the organisation’s diversity policy’. As part of the assessment of bids from suppliers, we consider how appropriate the firms’ diversity policies are, and to what extent they comply with the LSB’s own policies for diversity. Where it is appropriate to the work, the LSB will specify that the tender should consider diversity issues. We would expect a supplier to engage with the subject, and consider how to collect a representative sample of people with protected characteristics, or how to address any difficulties there might be in gathering information from anyone with a protected characteristic, including fully considering how to maximise response rates and how to protect respondents’ personal data.
24. When recruiting for vacancies, we enquire about recruitment firms’ diversity policies, and encourage them to find as diverse a pool of candidates as possible. We also ask recruitment agencies to ask candidates to fill in diversity forms so we can monitor our recruitment processes; however, the extent to which this is completed varies. The LSB accommodates requests for reasonable adjustments from candidates for interviews.
25. All new starters at LSB are required to complete online training on equality and diversity in their first weeks of employment and new colleagues and Board members receive bespoke face-to-face training at regular intervals.
26. The LSB has also implemented a number of policies to allow colleagues to work flexibly. The LSB has its own remote server that enables colleagues to work from home, and it has agreed a variety of requests for flexible working patterns, which allows colleagues to manage their professional and personal commitments.
27. LSB has recently published a diversity survey of colleagues and Board Members and will repeat this at regular intervals.⁶ The report details a range of actions that we are taking in response to the survey results.
28. The LSB always ensures its publications are available in a variety of formats, though it has been a number of years since receiving such a request. The LSB has a Welsh language scheme approved by the Welsh Language Commissioner. We reviewed the scheme in 2016, and provide annual reports to the Welsh Language Commissioner on the implementation of the scheme.⁷

Future actions

29. We will continue to implement the actions identified following the survey of colleague and Board members in April 2017.

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http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/pdf/201708_Equality_And_Diversity_Survey_Report_Revised.PDF

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<http://www.comisiynyddygyymraeg.cymru/English/Publications/Pages/PublicationDetails.aspx?PublicationId=415&PublicationSearchTerm=legal%20services%20board&Category=Welsh%20Language%20Schemes>

30. In August 2018 the LSB will formally assess the regulators' progress against the four outcomes published in our revised diversity guidance. The 2018 report will include a short section on each regulator outlining their individual progress including areas where we are pleased with the progress they have made and, if applicable, areas where we expect to see additional action on the part of the regulator in order to deliver progress against the outcomes.
31. The LSB will also use the information gathered through reviewing and monitoring the progress of regulators during the annual assessment of regulator diversity activity to inform its own work, and ensure it is appropriately supporting the development of a diverse workforce and demonstrating good practice.

Outcome 3: *The regulator collaborates with others to encourage a diverse workforce, including sharing good practice, data collection, and other relevant activities*

32. In considering this outcome, we have considered our work with other organisations to encourage a diverse workforce.

Assessment

33. In parallel with our assessments of the regulators' progress against our statutory guidance, over the last three years we have organised a number of round table meetings with colleagues at the regulators on diversity related topics, to encourage sharing of experience and good practice. At Chief Executive and Chair meetings, there have been discussions on the extent to which both the LSB and the regulators are supporting a diverse workforce.
34. As part of our 2016 consultation on revisions to our diversity guidance, we tried to engage with the broadest possible group of organisations that have specific interests and knowledge on the diversity of the legal services workforce. As a result, we received a number of responses from these groups and we intend to continue to engage with stakeholders throughout the time the guidance remains in place to ensure it is helping achieve positive change on diversity and continues to follow best practice. These responses are available publicly, and we have encouraged the regulators to consider them as they develop their work in this area.⁸
35. As discussed elsewhere in the paper we consider the impact on diversity of rule change applications that the regulators submit and we would expect the regulators to have given sufficient thought to the impacts changes might have.
36. The LSB collaborates and works with a number of organisations, for example, the LSB is a member of the UK Regulators Network. This gives us the opportunity to engage with economic regulators and share learning on diversity issues in regulated sectors.
37. We are also a member of the Judicial Diversity Forum. The Forum, chaired by the Judicial Appointments Committee, brings together organisations to identify ways of improving judicial diversity. We use the Forum to highlight our own diversity work, as well as engaging with stakeholders involved in the legal system but not within the regulatory framework, such as the Judicial Office and the Judiciary itself. These are

⁸ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/20170215_Submissions_Received.htm

examples of platforms for us to demonstrate our own work on diversity, and learn from others across a range of sectors and specialisms outside our core regulatory community.

Future actions

38. The LSB will continue to work in partnership with the regulators and other organisations to encourage diversity in legal services. The resources available to the regulators differ greatly, and our assessments demonstrate a wide variation in how well developed regulators' approaches to diversity. The LSB can facilitate collaboration in the interests of wider adoption of good practice across the legal services sector.
39. The LSB will continue engaging with organisations with expertise on diversity and protected characteristics to develop its understanding, and consider areas for improvement in our operational and regulatory arrangements.

Outcome 4: *The regulator accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse workforce*

40. In considering this outcome, we have looked at our corporate reporting and how we communicate our understanding, achievements and plans to encourage a diverse workforce.

Assessment

41. Through our annual report, speeches by the Chief Executive and senior colleagues and broader engagement with the regulators, we are confident that we make clear our intentions on diversity and the importance we place upon the work by all legal services regulators to encourage a more diverse workforce.
42. The LSB's Annual Report and Accounts provide an update to our stakeholders on how our work in the past year has tried to encourage diversity, for instance in 2015/16, we set out how our work had led us to the decision to review our diversity guidance the following year.⁹
43. As described above, the LSB has recently published a survey taken in April 2017 of the diversity profile of its colleagues and Board members.¹⁰

Future actions

44. We will continue to account for our progress through our Annual Report and Accounts.
45. In August 2018 we will undertake an assessment of regulators' progress against our revised diversity guidance and publish the results.

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535672/lsb-annual-report.PDF

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http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/pdf/201708_Equality_And_Diversity_Survey_Report_Revised.PDF