

To:	Legal Services Board	
Date of Meeting:	10 July 2013	Item: Paper (11) 46

Title:	Progress report: diversity data collection and publication	
Workstream(s):	Workforce development	
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Status:	Protect	

Summary:
<p>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 2009 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.</p> <p>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 27 to 29.</p> <p>Subject to the Board's comments, we plan to put the information in the public domain in September in the form of a short summary paper. This will accompany a roundtable with regulators to discuss how the issues identified will be addressed.</p>

Recommendation(s):
<p>The Board is invited to:</p> <ol style="list-style-type: none"> 1. Comment on the content of the report contained in the main body of 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
Reputational:	The Board should note the potential reputational damage to the LSB were the data collection exercise to be perceived as a failure
Resource:	None at this stage but were we to expect all ARs to reach 'exemplar' status it would require additional resource and we would need to consider in the context of other LSB priorities (both in terms of our resources and those of the regulators)

Consultation	Yes	No	Who / why?
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Board Members:	✓		Steve Green and Anneliese Day
Consumer Panel:		✓	
Others:	n/a		

Freedom of Information Act 2000 (Foi)		
Para ref	Foi exemption and summary	Expires
Table: Summary of Progress with Action Plans	Section 22 – information intended for future publication	

LEGAL SERVICES BOARD

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

Executive Summary

1. Encouraging diversity in the legal profession is one of the regulatory objectives set out in the Legal Services Act (the Act). In our analysis of the regulatory objectives we have made clear that we will promote diversity and social mobility through our regulatory framework and we expect approved regulators to do the same¹. We believe that the regulatory objective of a diverse legal profession will be judged by whether or not the profession reflects and is representative of the population it serves.
2. It is now widely accepted across the sector that while diversity has improved, this is predominantly at the lower levels of the profession and that the expected 'trickle-up' effect has not occurred. Improving diversity at the more senior levels of the profession is complex and our route to achieving our objective is necessarily long-term. Real change will be delivered not by diversity initiatives but by changing the way decisions are made. These are decisions made by the profession itself: on work allocation and reward within legal businesses, how success and commitment are measured and valued, individual business relationships and client expectations. Regulators must understand these issues and do what they can to incentivise the required behaviour change, while recognising that there are limits to what regulation alone can achieve.
3. Our strategy is therefore to use data to shed light on performance by requiring law firms and chambers to collect and publish information on the diversity make-up of their workforce. This will enable regulators to hold them to account for the decisions made in relation to recruitment and selection. Information will also be available for consumers to use in their purchasing decisions if they choose to, creating a powerful commercial incentive for change. Ultimately these incentives will shift the responsibility for delivering change onto the decision makers within the sector. Regulators must also play their part by using the data to assess the impact of their interventions in respect of diversity and social mobility. Better quality data across the sector will also provide a rich source of information for a wider audience that is interested in progress with diversity across the legal profession.

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

4. Using our powers to issue statutory guidance, we introduced requirements across the profession for data on diversity and social mobility to be collected and published. This report, our first review since the exercise began in 2012/13, looks at performance in the context of this guidance.
5. Our conclusions reveal some clear successes:
 - We now have data on diversity and social mobility where in many areas none existed before
 - We have moved regulators beyond thinking predominantly in terms of diversity initiatives and therefore taken away the ability of the sector as a whole to hide a lack of real progress behind these initiatives
 - The Solicitors Regulation Authority (SRA) has demonstrated a genuine commitment to embed diversity as a regulatory issue, producing high quality analysis and creating real links to its supervision and risk functions, which will enable meaningful discussions to take place with firms
 - The smaller regulators are starting to focus on diversity and take a consistent approach to data collection
 - And perhaps the most significant achievement – the concept of collecting and publishing data to stimulate action has been accepted.
6. We have also identified some real challenges:
 - Even in the most successful examples, the data is patchy and in many areas falls below what we might hope to achieve. The SRA appear to have learned lessons and there has been good engagement with larger firms to improve collection for next year
 - For the Bar Standards Board (BSB), the quality of the data collected so far is a concern given the low response rates among individual barristers compared to what they have achieved in the past. While they have been able to supplement some of the data from other sources (gender, ethnicity and age), the BSB is currently considering how to address the low response rates
 - Regulators are yet to really establish what they will do with the data in the medium to long term or what the response rates signify in relation to culture, compliance or regulatory performance.
7. This review has therefore confirmed for us that this is part of an ongoing process and regulators must continue to drive it forward. While the market will become the best way to effect change, data is needed for this to happen. This means regulators focusing more on improving the data as well as thinking about what it tells them:
 - Where are response rates particularly poor?
 - What is driving that behaviour and making individuals more or less likely to provide the information?

- For those that regulate entities, is there a correlation between poor response rates and poor diversity in firms/chambers?
- Which organisations are doing well and why?

The SRA and BSB have made a good start by talking to firms and chambers about what they are doing to improve diversity. They now need to build upon this and the rest should begin to follow their lead.

Background – setting objectives

8. In July 2009 we used our powers under section 162 of the Act to issue statutory guidance on the collection and publication of diversity data. The guidance sets out how we think the regulatory objective of a diverse legal profession can best be secured, creating two clear objectives:
 - 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
 - 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).
9. A model questionnaire was provided to help ensure consistency of data collection across the different branches of the profession².
10. Approved regulators were required to submit action plans setting out how they intended to deliver the objectives in the guidance. These action plans were assessed by the LSB in April 2012 at which point the LSB said it intended to review progress as early as possible in 2013. While regulators are free to vary their approach from the guidance if it can be justified in the context of the regulatory objectives, all of them have made a commitment to collect and publish the data. Those that regulate entities (with the exception of IPReg) have introduced requirements for entity level publication.
11. Five of the seven regulators have now completed the first round of data collection (with the Costs Lawyers Standards Board (CLSB) recently having completed and published its second annual return). The Council for Licensed Conveyancers (CLC) and the Intellectual Property Regulation Board (IPReg) are making progress and expect to publish data in the second quarter of this year. We therefore consider it to be an appropriate point for the LSB to review progress

²The model questionnaire covers the following protected characteristics: age, gender, disability, ethnic group, religion or belief and sexual orientation. It also includes two questions relating to social mobility: whether respondents went to a state or fee paying school and whether they are the first generation in their family to attend university. Data on social mobility has been notably lacking in the legal services market.

with the action plans and delivery of the objectives within the guidance. It should be noted that as aggregated data is not yet fully available across the profession, this report will not provide an analysis of the data itself.

12. Our aim has been to keep this review process simple and focused upon the data collected, compliance rates across the profession and delivery of the objectives within the guidance. We have not sought to assess in detail whether approved regulators have kept to the precise timetables in their action plans but rather to review the outcomes achieved at this stage of the process. However we have taken note of any delays that have occurred.
13. The factual accuracy of the appendix to this report has been checked with the approved regulators but the issues identified are our own assessment based upon the information available to us.³

Data collection objective

14. Delivery of the first objective in the guidance requires data to be collected by each of the regulators against all of the strands in the model questionnaire. All of the approved regulators chose to use the LSB's model questionnaire and while some minor amendments have been made, no changes were made to the categories of data collected. This should ensure consistency in information across the profession once all of the data is available.
15. In terms of information collected, the appendix to this report shows that:
 - The regulators that have completed the collection exercise hold data in all of the strands used in the model questionnaire for their regulated communities
 - Data on the legal services workforce outside of the regulated professions is limited at this time. Only the SRA has published information on non-lawyers although the CLC will be doing so once its collection exercise is complete. There is still some resistance in parts of the profession as to why this information is relevant or how it might be used
 - Response rates have widely varied between the professions; the SRA and Faculty Office achieving over 40% while both the BSB and ILEX Professional Standards (IPS) achieved less than 6%. The usefulness of the data held by those regulators that received low response rates is limited due to the unreliability of any findings drawn from such small sample sizes
 - Different levels of response have been achieved in different strands with the lowest levels of data in the disability, religion or belief, sexual orientation, socio-economic background and caring responsibility strands. BSB analysis suggests that the low disclosure rates in these strands mean

³ Meetings have taken place with representatives from CILEX/IPS; SRA; BSB and IPReg

that the data is unreliable and should not be used for statistical analysis.⁴ This raises questions as to how far the profession has accepted the relevance of all of the information being sought

- The context in which the data is collected and by whom may have an impact on response rates. IPS and the BSB achieved the lowest response rates. The BSB's experience suggests that where chambers collected the data themselves, response rates were higher than for the BSB's own exercise (where individuals could provide information alongside the practising certificate renewal process). IPS relied heavily on the CILEx omnibus survey which is sent out by the representative body to all members. Like the BSB they have also collected information through more than one mechanism which may have had an impact.
- There may be tensions between our objective for firms and chambers to take responsibility for collecting and publishing their own data and our desire for a consistent data set across the profession⁵. It is likely that as the SRA develops its approach and increases its experience of collecting this data, it may decide to offer greater flexibility to the larger firms that have already established their own data collection systems, which could potentially compromise consistency. This may also become an issue for the CLC as it transfers responsibility for data collection on to the regulated community.

Transparency and publication objective

16. The second objective in the guidance relates to those approved regulators that regulate entities⁶. To ensure that employers and clients have the option to consider transparent, meaningful data in the decisions that they make, the LSB guidance recommends that firms and chambers are required to conduct the data collection exercise themselves. A summary of the information should then be made publicly available.

17. The appendix to this report shows the extent to which this information has been made publicly available. Some key findings include:

- The SRA's thematic review found that clients can play a key role in driving firms to do better with equality issues. This supports our view of the potential incentives created by transparency; a more proportionate response than other more costly interventions
- The BSB's regulatory arrangements required chambers to publish the data by December 2012 but chambers were not required to provide this data to

⁴ https://www.barstandardsboard.org.uk/media/1439335/bsb_part_1_agenda_121213.pdf, see paper *Aggregated Diversity Data on the Barrister Profession*, paragraph 4, page 41

⁵ In our response to consultation response we said that "*The principle of transparency should be our initial priority*" (page 16) and that we would review the impact of transparency by the end of 2014 at which point we would consider whether more specific requirements for action are needed (page 20)

⁶ Action plans submitted by SRA, BSB, IPReg and CLC all contained proposals for how the requirements would apply to the entities they regulate. In the case of the BSB the entity arrangements relate to chambers although they are not strictly entities subject to authorisation at the current time

the BSB. A progress check exercise sampling 39 chambers conducted by the BSB revealed that 59% had complied with the monitoring exercise. The BSB will be conducting a full “all chambers” monitoring exercise in April 2014

- The LSB has looked at the top ten chambers (measured by turnover in 2012). Of those chambers we looked at, only three of the ten have published data for all of the strands required by the BSB (age, gender, disability, socio-economic background and caring responsibilities). Two of the ten do not appear to have published any of the data required by the BSB
- The SRA chose not to require entity publication for the first round of data collection but firms will be required to publish data collected from this year’s exercise.⁷ The SRA has published a full report on the data collected which includes a full breakdown against each of the categories and it has sought to refine its requirements in response to feedback from firms⁸
- To supplement the SRA’s report, we have also looked at the publication of diversity data in the top 10 law firms by turnover in 2012, i.e. those that are publishing voluntarily. Data on gender and ethnicity is published by all of the firms with the majority also publishing data on disability and flexible working. Although none of the firms publish data on caring responsibilities, there are at least one or two firms that have published data on each of the other strands in the model questionnaire.

Other issues – response rates and compliance

18. Our understanding from the information provided by regulators so far is that there has been a wide variation in response rates across the profession. While it can never be mandatory for individuals to provide the information requested, it does appear that the way the surveys were presented to the profession may have influenced the response rates. This raises broader questions about professional culture and compliance and, as regulators’ experience builds, we would expect greater consideration is given to what drives response rates.

19. For those regulating entities, the requirement to collect and publish diversity data is in most cases a mandatory regulatory requirement⁹. We said in the decision document for our consultation on improving diversity that we would “expect approved regulators to impose appropriate sanctions if entities refuse to comply with a regulatory requirement to monitor and publish diversity data in accordance with the applicable regulatory rules”¹⁰. The BSB is the only regulator to have

⁷ <http://www.sra.org.uk/sra/equality-diversity/diversity-data-collection.page>

⁸ http://governance.lawsociety.org.uk/secure/meeting/202969/SRA_Board_Paper_Public_Item_12_-_Compliance_with_Principle_9.pdf

⁹ IPReg does not require its regulated entities to collect and publish their own diversity information although work is underway to raise the profile of diversity issues among firms

¹⁰

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

requirements for entity publication at this time and has not yet completed its review of compliance. Both the SRA and CLC will require publication following this year's exercise. It is therefore too early to assess the approach to non-compliance but this is an area that we will keep under review.

20. The SRA has reported an average completion rate within firms of 42%, including all employees and not just solicitors. Its approach was to provide firms with a link to an online survey to be circulated to all employees and a clear link was made to the existing provisions in the SRA Handbook¹¹. We note that for some of the larger firms that already collect information of this kind, the response rates have been significantly lower than usual. For some firms, the global issue creates further challenges as data categories apply differently in different contexts; only gender provides a consistent benchmark across their employees¹². While these objectives were developed to create the right incentives for firms to make improvements to support the delivery of the diversity regulatory objective, there may need to be greater flexibility in the future if this is to be achieved. From this year, the SRA will require firms to collect their own data and provide it to the regulator.
21. The BSB does not have information on response rates within those chambers that have themselves collected the data, but the average response rate for the individual exercise run by the BSB was approximately 5%. The BSB itself in its review of the process found that one of the issues was that barristers were not automatically taken to the page of the website containing the survey. The BSB is currently considering how best to address these issues and we encourage them as the regulator to consider the attitudinal as well as technical aspects of behaviour.
22. The CILEx omnibus survey achieved a response rate of 5.5% and the CLSB survey 28% in its first year compared to the Faculty Office survey which achieved a 47% response rate. We are currently waiting on results from the CLC's exercise (which involves a similar approach to the SRA where a survey link will be mailed directly to the individuals) and IPReg in order to draw lessons from across the legal profession generally. We hope this will provide us and the regulators with best practice solutions on how to incentivise individuals to provide their information, for example, by focusing more on how the information is used and how it relates to other information collected by each regulator. One risk factor may be that individuals are being asked for the information more than once and may therefore be less likely to respond.

¹¹ Diversity data collection is identified as one of the Indicative Behaviours for Principle 9 which requires regulated firms and individuals to 'promote equality of opportunity and encourage respect for diversity'

¹² The LSB was invited to attend a meeting hosted by the Law Society on 29 November. Representatives from large firms, SRA, TLS and LSB were all present

Conclusion

23. Our review of progress towards delivery of the objectives in our guidance reveals that while much progress has been made, more work is needed to ensure collection and publication of sufficient data across the profession. Importantly the concept of collecting and publishing data as a means to stimulate action has been accepted, so regulators can now focus on what can be done to improve the quality of the data.
24. While not all of the regulators have completed the first round of data collection, our review has revealed a wide range in the response rates achieved. In our view, those at the lower end should be looking at why they have not done better, what they have done differently to those with higher response rates and what can be learned. Those that have done well should be looking to build on that in the next round of surveys. We will play our part in facilitating these discussions. We also expect regulators to consider how the data can be used to stimulate real improvements to diversity and how this fits within their wider risk frameworks.
25. We have seen some very positive examples of regulators approaching these issues in a targeted way, such as the SRA's recent work linking the diversity data collection to a thematic review of its broader equality and diversity requirements and its recent flagging of an insufficiently diverse profession as part of its Risk Outlook for 2013. It is through this kind of interaction that regulators will be able to get closer to decision makers and understand the real issues that are impacting upon progress with diversity, as well as what may be stopping individuals responding to the surveys. The BSB has also engaged with a sample of chambers in relation to its own equality and diversity regulations that were introduced last year. We await the full report with interest as better data will be needed to establish whether the new duties are having the desired impact or not. Others such as IPReg have been focusing on raising the profile of diversity issues through communications activity.
26. While we can see that this is an important step forward, as the data improves regulators can and should do more to challenge firms in this area. They can also recognise and reward those firms that are doing well. Reflecting on the approaches we have seen, we have set out in the table below some examples of how data collection and transparency can link into the longer term objective of improving diversity and the potential role for regulators. This is the basis on which we propose to reassess the regulators when all of them will have completed the first data collection exercise.

	Weakest performance	Good performance	Exemplar performance
Data collection and publication	<p><i>Information is collected but not published in its entirety</i></p> <p><i>Information is not collected for all of the strands in the model questionnaire</i></p> <p><i>Regulator relies on representative body to collect and publish information</i></p>	<p><i>Regulator collects and publishes information against all of the strands in the model questionnaire</i></p> <p><i>For entity regulators, responsibility for collecting and publishing data is placed on the entity and regulator tackles compliance issues</i></p>	<p><i>Information is made available in a prominent way, for example directory for regulated entities links through to diversity profiles so that consumers can access the information if they choose</i></p> <p><i>Entity regulators look at relative performance of firms in data collection exercise to see if low response rates are an indicator of wider issues</i></p>
Response rates	<p><i>Regulator does nothing to increase response rates</i></p>	<p><i>Regulator takes a pro-active response to tackling low response rates and adapts their approach accordingly, for example entity collection of information</i></p>	<p><i>Regulator sets targets for improving response rates supported by clear actions</i></p>
Using the data	<p><i>Regulators fails to analyse the information</i></p> <p><i>Limited analysis of the data is completed but not used</i></p>	<p><i>Regulator incorporates diversity into supervision discussions</i></p>	<p><i>Regulator risk rates firms on the basis of diversity, focusing supervision on those with the poorest diversity record</i></p>

Next steps

27. Each of the regulators has a clear timetable for the next round of data collection which we expect them to meet. However, there are clearly lessons to be learned from the first exercise. Over the coming months we will focus on regulators plans to:

- Improve response rates and compliance
- Use the data in the wider regulatory toolkit and risk assessment

28. The table above will provide the basis for which we will review their progress after the second year's data collection exercise has been completed. We do not intend to make any changes to the statutory guidance before that point.¹³

29. It is important for LSB and regulators to view the diversity challenge within the wider risk framework so that they give this appropriate priority and resource allocation. The regulatory objective obviously adds to the significance of general

¹³ In our response to consultation we also said we would review our decision not to require publication of data on sexual orientation and religion or belief by the end of 2013, with a view to expanding the range of published data available by the end of 2014. We also said that more work was needed to determine whether a question on gender reassignment should be included in the model questionnaire. Given the issues raised by this review and the overall assessment that we are still some way from delivering the objectives set out in the guidance, it is our view that we are still at an early stage of implementation and it is still too early to consider making changes to the model questionnaire or to the publication requirements.

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. 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 previously intractable problem. This is not to avoid or downplay the importance of diversity, but to recognise that LSB must be in this for the longer term as well as impatient for early progress.

Table: Summary of Progress with Action Plans

[REDACTED]