



To:	Board		
Date of Meeting:	30 November 2010	Item:	Paper (10) 81

Title:	Promoting diversity and social mobility in the legal workforce – update and consultation paper
Workstream(s):	Workstream 2F: Developing a Workforce for a Changing Market
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Status:	Protect

Summary:
This paper provides an update on progress with work on increasing diversity, including detailed proposals on data collection and delivering transparency at firm/chambers level. It seeks the Board's agreement to write to the Approved Regulators (AR) setting out our expectations, and to publish the consultation paper (Annex B) (subject to any minor amendments, which will be approved by the Chief Executive).

Risks and mitigations	
Financial:	None.
FoIA:	Pre-meeting assessment of exempted text is highlighted. Annex B – s22.
Legal:	None.
Reputational:	LSB has made a strong commitment to delivering results; reputational risk if approach does not have desired impact.
Resource:	Resource currently considered sufficient.

Consultation	Yes	No	Who / why?
Board Members:	✓		David Wolfe and Nicole Smith.
Consumer Panel:	✓		Presentation to the Panel on 6 October.
Others:	N/A.		

Recommendation(s):
The Board is invited: <ol style="list-style-type: none">(1) to note the progress update;(2) to agree that the Chief Executive should write to ARs setting out the Board's expectations, in the terms proposed at paras 10-12; and(3) to agree to the content and publication of the consultation paper (Annex B) (subject to any minor amendments, which will be approved by the Chief Executive).

LEGAL SERVICES BOARD

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Promoting diversity and social mobility in the legal workforce – update and consultation paper

Executive Summary

1. The Board agreed in June 2010 that the priority in relation to promoting diversity and social mobility for 2010/11 would be the development (with ARs) of a consistent and comprehensive framework for gathering and publishing data about diversity and social mobility. This will have a particular focus on retention and progression in the professions.
2. This paper provides an update on the work we have done with ARs and wider stakeholders to develop a detailed proposal. It summarises the reactions from ARs and stakeholders. Finally, it seeks the Board's approval to write to ARs setting out the Board's expectations and invites the Board to agree the content and publication of the consultation paper (**Annex B**).

Recommendations

3. The Board is invited:
 - (1) to note the progress update;
 - (2) to agree that the Chief Executive should write to ARs setting out the Board's expectations, in the terms proposed at paras 10-12; and
 - (3) to agree to the content and publication of the consultation paper (**Annex B**) (subject to any minor amendments, which will be approved by the Chief Executive).

Background / context

4. The Board agreed in June 2010 that we should focus our efforts on addressing the issues of retention and progression of lawyers from under-represented groups. This was in light of the evidence of poor representation at senior levels (**Annex A**). In particular, it was agreed that the priority in relation to promoting diversity and social mobility for 2010/11 would be the development (with ARs) of a consistent and comprehensive framework for gathering and publishing data about diversity and social mobility.
5. Since June, we have been working with ARs and representative bodies through our Diversity Forum to develop more detailed proposals, and have also engaged with the Legal Services Consumer Panel and other relevant stakeholders, such as the Equality and Human Rights Commission (**EHRC**) and Stonewall.

Proposed approach

6. We have had discussions with the two largest ARs – Solicitors Regulation Authority (**SRA**) and Bar Standards Board (**BSB**) – about how they might go about implementing the collection and publication of workforce diversity data as a regulatory requirement on entities. One of the issues that came out most strongly from these discussions was the need to think carefully about how best to integrate this data collection as part of the broader regulatory framework. At a firm level, duplication in data requests should be avoided where possible (in line with the Hampton principles), and significant communications activity will be needed to educate the profession about the reasons why this is a proportionate regulatory requirement. In some cases, the ARs consider that they already have sufficient data about particular diversity strands that would enable them to implement targeted policy responses.

7.



8.




9. Depending on the responses to the letter from ARs, it may be appropriate to issue guidance about best practice in achieving transparency at entity level, including common data categories against each diversity indicator. The substance of our thinking on this is set out in the consultation paper and has been discussed extensively with ARs. Whether or not we decide to formalise this into statutory guidance should be dependent on the willingness of ARs to propose appropriate new regulatory requirements on their own initiative.

10. At this stage, we propose an approach consisting of the following two elements:

- a letter from the Chief Executive to ARs setting out the Board's immediate priorities and requesting proposals about how ARs intend to meet them (similar in some respects to the Internal Governance Rules self-certification process)
- a consultation setting out our thinking on how to achieve transparency and common data categories, which could be formalised as guidance under s162 following the consultation, if appropriate.

11. We recommend that the letter should set out the following immediate priorities for action in 2011 to encourage a more diverse legal workforce:
- gathering an evidence base about the composition of the workforce to inform targeted policy responses
 - evaluating 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).
12. It is proposed that ARs should be requested to provide LSB with:
- an assessment of their current evidence base about the diversity of their regulated community (covering what they hold and an analysis of strengths, weaknesses and gaps)
 - an outline of how they propose to promote transparency at entity level, and any areas where they propose to depart from the approach set out in the consultation paper (with justification)
 - an explanation of the steps taken to ensure that diversity initiatives are targeted based on the evidence and evaluated for their impact in contributing to greater workforce diversity.
13. These responses from ARs, together with consultation responses, will help inform the Board's final decision on next steps and the nature of the guidance that should be issued.

Stakeholder handling

14. We have continued to engage constructively with the EHRC, which is extremely supportive of our approach. The recent publication of the EHRC report "How fair is Britain?" highlights the importance of data to enable targeted policy responses at a time when there are scarce resources. The launch of the event also saw the EHRC emphasise the transformative power of transparency in driving action. The work we are doing in relation to the legal workforce can be seen as a microcosm of the work EHRC is doing for society as a whole.
15. The Black Solicitors' Network has also expressed strong support for our proposed approach, as has the Society of Black Lawyers. We have had helpful meetings with Stonewall and the Sutton Trust, who also strongly support our focus on data collection and transparency at firm/chambers level. All have agreed to us highlighting their support in the consultation paper, and are prepared to offer public backing for our proposals.
16. We presented our proposals to the Legal Services Consumer Panel on 6 October. 

[Redacted]

17. Clearly, achieving transparency is not a 'silver bullet', but we consider it is a significant and necessary first step that is likely to influence the behaviour of firms. We must be clear in our communications with stakeholders that we do not see our current proposals as the whole answer to the diversity challenge, but emphasise the importance of a more comprehensive evidence base and a need to put the onus on firms and chambers to take action. Our advice is that the proposed approach represents our best chance of making a significant impact in the short-term, given the limited evidence available and our limited resources. Our efforts should be complemented by the work of ARs and the profession more broadly, and the evidence gathered through the data collection process will help inform targeted policy responses in 2011/12.

Response from Approved Regulators

18. [Redacted]

19. [Redacted]

20. [Redacted]

21. [Redacted]

Media handling/communications

22. There has been some media coverage about the proposals following the release of the June Board paper, the Chief Executive's recent letter to ARs on diversity, which we published on our website, and his speech earlier this month to the SBL/NUS recruitment conference. [Redacted]

[Redacted]

[REDACTED]

23. However, there are also a significant number of firms that already publish workforce diversity data and some that go further – setting targets and devising action plans for delivering change (for example, initiatives to drive up the percentage of female partners). The Law Society Diversity and Inclusion Charter and Black Solicitors' Network League Table are also operating in similar territory and have a significant number of firms and chambers participating voluntarily.

[REDACTED]

24. This highlights the importance of a comprehensive communications strategy to highlight the scale of the diversity challenge, the nature of the barriers and to demonstrate why the data collection and transparency requirements are a proportionate regulatory intervention (compared with more stringent potential requirements such as targets and quotas).

25. We have already prepared the ground for the publication of the consultation paper with significant trailing in the media and on public platforms, including:

- the Chairman's article in *Legal Week* in the summer
- coverage around the publication of the Chief Executive's letter to ARs about diversity and social mobility in September
- the Strategy Director's article in *The Guardian* online last month
- the Chief Executive's speech to the Society of Black Lawyers on 6 November.

26. We will continue to make the case for transparency and a better evidence base in launching the consultation and during the consultation period. In particular, we will attempt to secure public support from senior figures in the profession – for example, senior partners in large city firms who already publish their workforce diversity data. We have also secured offers of public support from EHRC, Stonewall and the Sutton Trust.

27. The Government has recently made a number of announcements on equality policy that suggest a move away from *prescriptive* requirements and an increased focus on outcomes – for example, abandoning plans to implement the socio-economic duty that was to have been imposed on a limited number of specified public bodies by the Equality Act 2010. The Attorney General has also recently removed a requirement for barristers' chambers with members on the Attorney General's Civil and Criminal Panels to report diversity data. However, there has been an increasing focus on transparency, which is consistent with our proposed approach – illustrated by extracts from a speech given by the Minister for Women and Equalities on 17 November:

"We will take a new approach to tackling the causes of inequality. We will use targeted action to deal with its consequences. And we will ensure accountability by shining the light of transparency on organisations, allowing their performance to be challenged and acting as a driver for change.


...

Accountability and Transparency

To drive change across all of these areas, we need to make organisations more transparent and more accountable.

As we enhance transparency, we shine a light on the behaviour of government and businesses. That empowers people to hold organisations to account for their behaviour. And that in turn encourages organisations to change their behaviour.”

28. We also know that there will continue to be high Ministerial interest in the area of social mobility, evidenced by a Ministerial Group led by the Deputy Prime Minister and the re-appointment of Alan Milburn to review progress in implementing the findings of his review.

29.  We have proposed that small firms/chambers with less than 20 people should only be required to complete a data collection exercise every three years (compared with an annual exercise for larger firms/chambers), and sought views on a simpler publication requirement for small organisations that does not require them to break down the diversity data by levels of seniority. This also helps to address the concern that sensitive information about individuals could be revealed in a small data set.

30. There will also be firms/chambers who will argue that they are powerless to act. A small rural firm, for example, could argue that they have very low staff turnover (and, therefore, limited opportunities to increase diversity through recruitment) and a pool of candidates in their region lacking in diversity (for example, in terms of ethnicity). We have also acknowledged in the consultation paper that a lack of diversity should not necessarily be seen as bad, if it can be justified.

Research

31. We have now published the research we commissioned from the Universities of Westminster, Leeds and Leicester about the experience of women and BME practitioners. The research highlights the academic literature on diversity that points to the importance of having reliable data and statistics at the workplace level, and the fact that such information is variable in the legal profession. One of the recommendations of the report is that frontline regulators gather and publish “practice-specific statistics... [to help]... identify problem areas and provide potential recruits and clients with access to the diversity information for which there is clearly a market.”

Conclusion

32. We recommend that the Board agrees that the Chief Executive should write to ARs setting out our expectations and approves the publication of the consultation paper (**Annex B**) (subject to any minor amendments, which will be approved by the Chief Executive).

18.11.10

The Gender and Ethnicity Split of Solicitors and Barristers

Chart 1: Gender and ethnicity split of solicitors 2009 (Source: The Law Society)

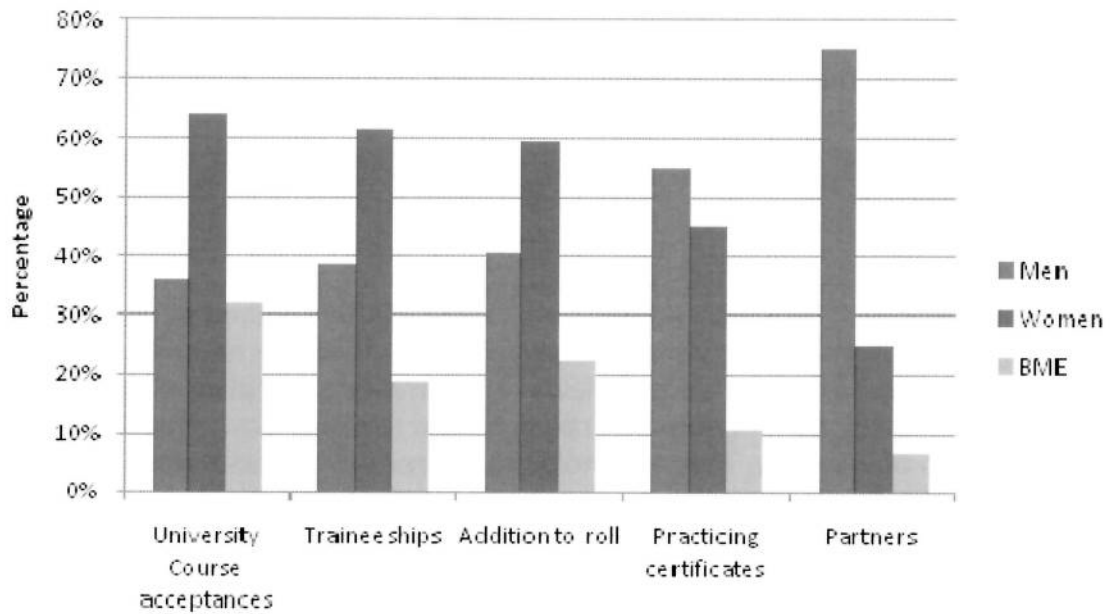


Chart 2: Gender and ethnicity split of barristers 2009 (Source: The Bar Council)

