

To:	Board
Date of Meeting:	29 June 2010
Item:	Paper (10) 47

Title:	Promoting diversity and social mobility in the legal workforce – update and proposed next steps
Workstream(s):	Workstream 2F: Developing a Workforce for a Changing Market
Introduced by:	Crispin Passmore, Strategy Director crispin.passmore@legalservicesboard.org.uk / 020 7271 0086
Author:	Michael Stacey, Project Manager michael.stacey@legalservicesboard.org.uk / 020 7271 0089
Status:	Protect

Summary:
This paper provides an update on progress with the LSB’s work on promoting diversity and social mobility in the legal workforce, and seeks the Board’s agreement to the proposed approach for 2010/11.

Risks and mitigations	
Financial:	None.
FoIA:	None.
Legal:	Advice required on Data Protection Act implications of proposed framework for data collection and publication.
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:		✓	Views will be sought on proposed measurement framework once developed, particularly in relation to publication of diversity data by regulated entities
Others:	N/A.		

Recommendation(s):
The Board is invited:
<ol style="list-style-type: none"> (1) note the progress update at paras 12-14; and (2) to agree the next steps proposed at paras 15–29, in particular the proposals: <ul style="list-style-type: none"> • to focus effort on addressing the issues of retention and progression of lawyers from under-represented groups; • to develop guidance to Approved Regulators (AR) recommending a framework for gathering and publishing diversity and social mobility data; and • to provide leadership and influence the debate through communications and media activity.

LEGAL SERVICES BOARD

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Promoting diversity and social mobility in the legal workforce - update and proposed next steps

Executive Summary

1. This paper provides an overview of current issues in relation to diversity and social mobility in the legal workforce, reviews progress so far in addressing them and makes proposals about the LSB's role in 2010/11. The Board is invited to agree the proposed approach.
2. The main priority is the development, with ARs, of a consistent and comprehensive framework for gathering and publishing diversity and social mobility data. Transparency about diversity at entity level should help drive change and target action, as well as providing a baseline to assess the impact of current initiatives and wider policy developments. This will be complemented by research and communications activity to provide leadership and influence the debate among ARs and wider stakeholders.

Recommendations

3. The Board is invited:
 - (1) to note the progress update at paras 12-14; and
 - (2) to agree the next steps proposed at paras 15–29, in particular the proposals:
 - to focus effort on addressing the issues of retention and progression of lawyers from underrepresented groups;
 - to develop guidance to approved regulators recommending a framework for gathering and publishing diversity and social mobility data; and
 - to provide leadership and influence the debate through communications and media activity.

Background / context

4. The Legal Services Act 2007 specifies a regulatory objective for the LSB and ARs to “encourage an independent, strong, diverse and effective legal profession”. Diversity is also a key enabler across other regulatory objectives in the Act.
5. In addition, the LSB and ARs are subject to the general duties under equalities legislation in relation to gender, ethnicity and disability in carrying out their functions. When the Equality Act 2010 is brought into force, these duties will be

expanded to cover all seven strands of diversity – race, gender, gender identity, disability, age, religion or belief and sexual orientation. The previous government had committed to commencement in late 2010, although it is now less clear that this timetable will be met (the Act is not mentioned in the coalition agreement and recent media reports about implementation dates being removed from the Government Equalities Office website suggest that there may be a delay). We will continue to monitor plans for commencement and consider the impact on our equality and diversity work.

6. The Board agreed in November 2009 that it should jointly own the development and implementation of workforce development activity (including diversity & social mobility, quality assurance and education & training) with ARs, who would lead on delivery. The Board agreed that it should make clear its ambitious expectations of ARs, and be prepared to assume a more direct leadership role if an AR failed under review to demonstrate competency in this area.

Current issues

7. There is currently a wide range of initiatives focused on improving diversity and social mobility at the entry level to the profession: run by ARs, regulated entities, charities and others. This demonstrates a strong commitment from many in the legal services sector to make real progress, backed by significant funding. There has clearly been an improvement at entry level, where a majority of newly qualified solicitors and barristers are now women and the proportion of black and minority ethnic (**BME**) lawyers is significantly greater than the proportion of BME people in the UK population as a whole.
8. However, it is less clear that progress is being made on retention and progression (for example, available data suggests that only 25% of partners in solicitors firms are women¹, and only 3.5% of partners in the top 150 firms are BME²). There is evidence that the numbers of women and BME lawyers entering the profession has been increasing for a number of years. For example, in 1996, 58% of students accepted to study law degrees were women and BME students accounted for 13% of admissions across all subjects at all universities³. This cohort is now at or nearly at the stage of being considered for partnership in solicitors firms (8 – 9 years post-qualification experience). However, the anticipated ‘trickle up’ effect has not materialised. There is also evidence of significant pay differentials, and a concern that the impressive headline figure for BME entrants as a whole could mask significant under-representation for some groups (for example, African-Caribbean men or Bangladeshi women). Charts illustrating the gender and ethnicity split of solicitors and barristers are attached at **Annex A**. This evidence suggests that not enough is being done by ARs and the profession more broadly to tackle issues within their own area of responsibility.
9. Formulating an effective policy response to address these issues is hampered by the difficulty of evaluating the impact of initiatives. There is currently a lack of comprehensive data about the make-up of the legal profession and wider legal workforce in terms of the key diversity indicators. To evaluate what is being

¹ Law Society Statistics 2009

² Black Solicitors Network Diversity League Table 2009, based on 50 responses

³ UCAS data

achieved, there will need to be a much improved mechanism for gathering comprehensive and reliable data on the diversity make-up of the workforce.

10. There is some evidence that consumers are beginning to drive action by regulated entities to increase diversity – public sector bodies and some large companies are requiring diversity information as part of the procurement process to purchase legal services; and a number of solicitors firms have begun publishing diversity data. A good example of action in this area is The Law Society's Protocol on the Procurement of Legal Services, which enables purchasers of legal services to demonstrate their commitment to promoting equality by adopting practical measures such as asking suppliers for key indicators of their commitment and progress in implementing effective equality policies. This has attracted an impressive range of signatories including large corporations (BT, National Grid, BP, Barclays, HSBC) and a range of local authorities. This success suggests that greater transparency about diversity at firm or chambers level could accelerate the pace of change by giving a commercial incentive to take equality and diversity seriously.
11. While some data is currently collected by ARs as part of the practising certificate process, there is no effective mechanism for putting the onus on firms or chambers to take action on equality and diversity.

Progress so far

12. In 2009/10, we focused on developing and contributing to networks of ARs and representative groups, including the Diversity Forum of Professional Regulators, JAC Diversity Forum and leading some of the work on responding to the Milburn Report on Fair Access to the Professions. Work was completed through the Diversity Forum of Professional Regulators on mapping of current issues and initiatives. The LSB also consulted on its draft Equality Scheme and published the final scheme on 25 May 2010.
13. We also commissioned academics from Westminster, Leeds and Leicester Universities to carry out research on "Drivers behind the diversity experience of the legal market in England and Wales". This involved focus groups and interviews with solicitors and barristers to understand the barriers to their careers in law. The report is currently being finalised and a conference/launch is planned for later this year. A literature review has also been completed by our internal research team, to complement the academic research.
14. The Executive Summary of the literature review is attached at **Annex B**. The current draft Conclusions and Recommendations section of the joint Westminster, Leeds and Leicester research is attached at **Annex C**. This is still work in progress and the research is still being finalised; we expect to receive the final report in July.

Proposed next steps

15. In the Business Plan 2010/11, we committed to shift the emphasis from what is being done to what is being achieved – building an evidence base to inform policy making, and promoting transparency about diversity and social mobility as a lever to change behaviour.

16. Given the wide range of initiatives already underway, we do not think that the LSB launching new public-facing initiatives is the most efficient or effective use of our limited resources. Rather, we consider that we can add most value by:

- influencing the debate on diversity and social mobility to bring the issues into the mainstream within the legal profession and ensure they are not seen as an “optional extra”;
- encouraging firms/chambers to gather and publish data about the diversity of their workforce; and
- encouraging ARs to target their effort in running equality and diversity initiatives based on evidence, and evaluate their impact.

17. The focus by others on improving diversity and social mobility at the entry level suggests that we and ARs should concentrate on retention and progression within the profession. This is where there is currently less activity, and also where we as an oversight regulator have the most levers to drive change. We intend to carry out a public consultation on the best approach, and this will include an Impact Assessment of the various options. We are not at this stage convinced that targets or direct regulatory action would be the most effective approach, although such interventions may need to be considered in future once we have a clearer evidence base.

18. The draft research report from the Universities of Westminster, Leeds and Leicester makes recommendations about seven themes:

- Financial support for vocational training and trainees
- Monitoring and disclosing diversity data
- Formal mentoring, role models and networks
- Flexible working/structural reforms
- Outreach activity
- Reform of qualification pathway and training contract
- Diversity training.

This provides a helpful framework for thinking about the action the LSB, ARs and regulated entities can take to remove barriers to entry and progression (the full draft Conclusions and Recommendations from the current draft of the report are attached at **Annex C**).

19. Success in removing barriers to progression cannot necessarily be measured only by looking at whether the diversity make-up of traditional firms or chambers changes to reflect the wider population. Changes to the legal market and new, innovative business models also create opportunities to increase the diversity of the legal workforce by introducing greater flexibility (for example through virtual law firms) – and female or BME lawyers may well lead innovation and chose not to pursue a career within a traditional firm.

20. We consider that the first step in delivering change, and the one where we can have most impact, must be promoting greater transparency about diversity at entity (i.e. firm/chambers) level across the range of practice areas and existing business models. Therefore, central to our programme this year is developing and implementing with ARs a consistent framework for gathering and publishing

diversity and social mobility data. Greater transparency about diversity and social mobility data (including publication of data at entity level) will:

- drive behaviour by regulated entities to improve performance – transparency and accountability can make change consumer driven (even if this is currently primarily corporate consumers, there is the potential for individual consumers and potential recruits to use this data to inform choices if there was widespread availability) ;
- provide evidence for ARs and others to identify priority areas for action and ensure resources are targeted effectively;
- provide a baseline against which to evaluate the effectiveness of current initiatives; and
- enable broader policy changes to be assessed more effectively in relation to their equality impact.

21. This framework should go beyond the traditional areas of focus – gender and ethnicity – and encompass all seven strands of diversity plus social mobility. There is also a need to look beyond some of the broad categories – for example, an apparently good level of representation in relation to BME lawyers may mask under-representation of a particular ethnic group.

22. By putting the onus on the entity to collect and publish data, we will make the entity accountable for what they decide and deliver. It is the firm or chambers that recruits the workforce, establishes the culture, trains and promotes employees and allocates work; it is therefore the firm or chambers that is best placed to drive change. We will also need to consider the position of in-house lawyers and how we can best promote diversity among this part of the legal sector. Available data suggests that in-house lawyers are more diverse than the profession as a whole (for example, because there is better access to flexible working arrangements allowing lawyers to combine work with childcare commitments). This suggests that we are right to focus on law firms/chambers, but we would still expect ARs to demonstrate progress on improving diversity across the profession.

23. We propose that the Board's policy statement on the measurement framework should take the form of guidance to ARs issued under s162 of the Legal Services Act 2007. The Board may have regard to the extent to which an AR has complied with such guidance when exercising its functions. The draft guidance and impact assessment will be prepared for consultation in October 2010 and we anticipate seeking the Board's agreement to formally issue the guidance in February 2011. The guidance is likely to suggest that ARs should:

- require regulated entities to request their employees (lawyers and non-lawyers) to complete a diversity monitoring questionnaire covering all seven strands of diversity, plus social mobility (completion by individuals will be voluntary);
- require regulated entities to publish the results of their diversity monitoring exercise (including response rate), broken down by level of seniority;
- collate this data from regulated entities and analyse it to identify areas for action; and
- report data to the LSB to enable a picture to be built up of diversity across the whole sector (including non-lawyers).

24. We are not (subject to consultation responses) proposing that there should at this stage be any regulatory requirement on entities to take action to improve the representation of particular groups in their workforce; or raising an expectation that ARs should intervene in firms or chambers with low numbers of employees from diverse groups. Rather, we are proposing that as a first step it is appropriate to simply require regulated entities to be transparent and give them the opportunity to make their own judgements about any action they feel is necessary to improve their diversity make-up. We consider that this approach strikes the right balance between the need to take decisive action to meet the regulatory objectives, and the requirement for a proportionate approach that minimises regulatory burdens. We will, however, explicitly ask a question about targets at entity level, seeking views on what size of organisation might in future be compelled / encouraged to set by targets by ARs.
25. Discussion with stakeholders on the proposed guidance will need careful handling to ensure that we build support for transparency without creating a perception that we are imposing unnecessary regulatory burdens (particularly as there is a renewed focus on reducing regulation by the new government). We have presented initial proposals to ARs and representative bodies on what such a framework might look like and received general support, albeit with some challenges on practicability – for example, the IT infrastructure and staff resources required by the ARs to collate and analyse the data, and concerns about data protection and the possibility of individuals in small organisations being identifiable from the data. We will continue to work with ARs over the summer to address these challenges and build consensus around a simple and clear approach which will be easy for firms/chambers of all sizes to implement (for example, by developing a model questionnaire and simple spreadsheet tool for data analysis). We anticipate some resistance from small ARs who may not see this work as a priority, and also some opposition from representative bodies and the profession generally in relation to the impact on small firms. We will address this by providing a clear rationale for transparency about diversity, and emphasising the proportionality of our proposed approach compared with alternatives. We will also consider with ARs the case for exempting small firms from publication requirements in relation to some or all of the diversity indicators.
26. The Equality and Human Rights Commission (**EHRC**) is supportive of our proposed approach, and considers that we are at the forefront of addressing equality and diversity challenges when compared with action being taken in other sectors. The Black Solicitors Network is also likely to provide public backing.
27. If the guidance is issued by the Board in February 2011, we anticipate that it will take approximately six months for the ARs to implement the guidance. Firms and chambers are likely to begin collecting and publishing data in autumn 2011, with aggregate data available to us about the whole of the profession in mid-2012.
28. This work on measurement will be complemented by a range of research and communications work aimed at providing leadership to the profession and influencing change. We will publish our research focusing on the barriers to entry and retention/progression, and raise awareness amongst ARs and the wider profession about the key issues. We plan to do some media work with the trade press – for example, an opinion piece in *Legal Week*. We will also publicise work done by the EHRC on examples of best practice in current initiatives, and publish

a unified route map for entry to the profession to make it easier for potential entrants to understand the range of qualification options.

29. Another important aspect of diversity, which we are not addressing specifically within the scope of this project, is the extent to which a more diverse profession is better able to meet the needs of diverse consumers of legal services (or whether there are still gaps in access to justice for particular groups of consumers). This aspect of diversity will be considered as part of the Access to Justice work-strand, where work is currently being planned and scoped.
30. Specifically in relation to social mobility, we will continue to contribute to the Gateway to the Professions Collaborative Forum, which is taking forward the recommendations of the Milburn report on Fair Access to the Professions. The Chief Executive is chairing sub-group 5 (Regulatory and Corporate Issues), which has undertaken a survey of regulators and professional bodies to assess current activity and best practice. The focus is now on developing a Social Mobility Toolkit for Regulators. Attached at **Annex D** is a summary of results from a survey of regulators which shows the extent to which data about diversity and social mobility is collected in other sectors. Those ARs taking part score comparatively well compared to other sectors.

Conclusion

31. Overall, the aim of our work over the coming year is to mainstream issues of diversity and social mobility, highlighting the benefits (including commercial advantages) and making progress on diversity and social mobility an issue that firms or chambers find it hard to ignore.
32. The work we do now in establishing robust and comprehensive data and promoting transparency will help prepare the ground for a major drive to improve equality and diversity in 2012-13, comprising of targeted action based on evidence.

16.06.10

The Gender and Ethnicity Split of Solicitors and Barristers

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

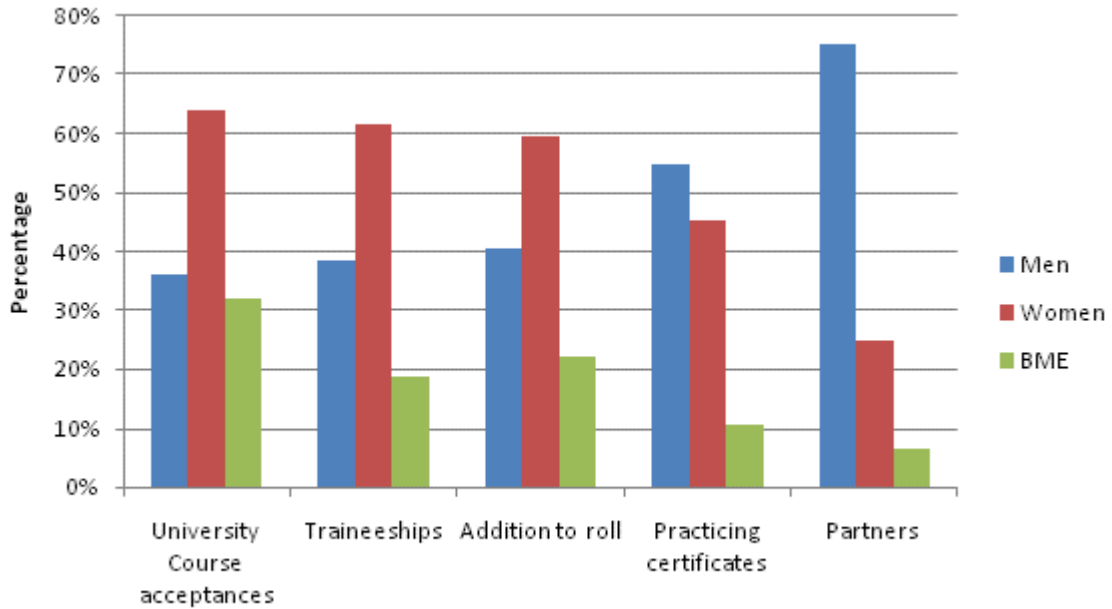


Chart 2: Gender and ethnicity split of barristers 2009 (Source: The Bar Council)

