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Dear Mandie,

Diversity and social mobility in the legal workforce

As you know, it is a major priority for the Board to drive action on increasing diversity and social mobility in the legal workforce. We have a statutory objective, shared with you as approved regulators, to “encourage an independent, strong, diverse and effective legal profession” in addition to our obligations under general equality legislation (shortly to be consolidated and expanded when the Equality Act 2010 is brought into force). I wanted to write now to set out the progress we have made so far, and highlight some areas where we would appreciate your input over the coming months.

Research

Our policy response to the issues must be evidence based. We have therefore carried out research to identify the barriers to entry, progression and retention that exist for particular groups. We have reviewed the existing academic literature and published our findings in a report *Barriers to the legal profession* (a copy is attached), which we have distributed widely to the senior partners of the top 150 law firms (by revenue), 60 heads of chambers, and legal educators. The report shows that the predominance of white, male lawyers from the highest socio-economic groups does not occur mainly as a result of overt discrimination, but rather barriers to entry and progression occur over the lifetime of individuals seeking a legal career. These barriers are present at every stage of an aspiring lawyer's career: initial education; university; work experience; post-graduate education; training contract or pupillage; and in career progression. I encourage you to consider the report and the extent to which your existing diversity work is addressing the barriers identified.

We have also commissioned original research from a team of leading academics led by Professor Hilary Sommerlad, to explore the experiences of women and BME solicitors and barristers, and the barriers they face in terms of retention and progression. This research will be launched at a conference hosted by the University of Westminster on 13 October. I would be delighted if you could attend – invitations and further details will follow shortly.

We have also been working, through our Diversity Forum, to produce a comprehensive mapping of existing diversity initiatives, and how these are being evaluated and their impact measured. We have been conducting interviews with approved regulators and representative bodies and hope to publish the results in October.

Transparency of data

We consider that the first step in breaking down the barriers to retention and progression has to be greater transparency about the diversity make-up of the profession at entity (i.e. firm or chambers) level. A major policy initiative this year is therefore the development, with you as approved regulators, of a consistent and comprehensive framework for gathering and publishing data about diversity and social mobility at entity level. We are currently developing guidance to be issued under s.162 of the Act which will set out our expectation that approved regulators should require firms/chambers to gather and publish data about the diversity of their workforce as a regulatory obligation.

We believe that transparency about diversity at a firm or chambers level will act as a powerful incentive to take action. 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. In addition, formulating effective responses to address these issues is hampered by the difficulty of evaluating the impact of initiatives, so gathering better data is essential to inform proportionate, evidence-based policy.

We intend to publish a consultation on the guidance in November. We will of course work closely with you and your teams over the coming months through our Diversity Forum of Professional Regulators to ensure that implementing the proposed framework is practicable and the requirements are proportionate.

ABS and diversity

A number of stakeholders have expressed concerns about the potential impact the introduction of ABS will have on BME practitioners. At the heart of these concerns is unease about the ability of small firms to survive in an increasingly competitive market. This is an issue regardless of ABS, which is simply about removing existing restrictions on ownership. The existing restrictions cannot be justified on the basis that they support a diverse profession. The introduction of ABS is one outlet for these concerns, but we are convinced that the underlying issue is not about legal structures for ownership but is a much deeper cultural one.

However, we do recognise that BME practitioners are disproportionately represented in small firms and we need to respond to the concerns that have been raised. We have therefore committed to undertake further work with relevant interest groups over the coming months to ensure the Impact Assessment for ABS takes account of these concerns, and identify any additional steps that could be taken to mitigate the impact (such as support for small firms through professional bodies).

We think that the introduction of ABS could be an opportunity and not a threat in terms of increasing diversity. I attach a paper we have produced that outlines our thinking, which we plan to use as a basis for discussion with stakeholders. We would welcome your feedback on this.

Social mobility

We continue to support the government's agenda on increasing social mobility in response to the Milburn report. I chair the sub-group of the Gateways to the Profession Collaborative Forum that is considering what regulators can do to increase social mobility. We are proposing the development of a toolkit for regulators and the Professional Associations Research Network (PARN) has put together a proposal which I attach. Please let me know if you would like to support this initiative.

Disproportionality in regulatory decision making

Finally, I wanted to highlight the comprehensive work carried out by the Solicitors Regulation Authority exploring the reasons for disproportionality in regulatory decision making, including research by Pearn Kandola (see <http://www.sra.org.uk/documents/SRA/equality-diversity/disproportionality-final-report.pdf>). We welcome the recent publication of this research, and the SRA's commitment to understanding the reasons why BME solicitors are more likely to be the subject of regulatory action. The Action Plan that the SRA has published provides clear proposals to address the recommendations, particularly where SRA outcomes compound the disproportionality caused by external factors.

I would be grateful if you could let me know whether you have identified similar issues in your enforcement action and provide any supporting data you may have.

If you or your teams wish to discuss any of the issues outlined above in more detail, please contact Michael Stacey, Regulatory Project Manager, on 020 7271 0089 or via michael.stacey@legalservicesboard.org.uk.

Yours sincerely



Chris Kenny
Chief Executive
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Attachments

- (i) Barriers to the Legal Profession – literature review
 - (ii) The potential impact of Alternative Business Structures (ABS) on the diversity of the legal workforce
 - (iii) Social mobility toolkit proposal
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