

# Tunbridge Wells, Tonbridge & District Law Society Regulatory Committee

E: [martin.varley@ts-p.co.uk](mailto:martin.varley@ts-p.co.uk)  
DD: 01892 701278

Michael Mackay Esq  
Legal Services Board  
7th Floor  
Victoria House  
Southampton Row  
London WC1B 4AD

By email: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

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Dear Mr Mackay

## **Response to the Consultation " Increasing diversity and social mobility in the legal workforce: transparency and evidence - Consultation paper on proposals to increase diversity and social mobility in the legal workforce" issued by the Legal Services Board (the 'LSB) (the 'Consultation')**

On behalf of the Regulatory Committee (**Committee**) of the Tunbridge Wells, Tonbridge & District Law Society (**Society**) I present our response to the Consultation. The Committee is comprised of four individuals. One is female and the others are male. None of them is transgendered. All define themselves as heterosexual. All four are members of the Law Society of England and Wales and are admitted as Solicitors of the Upper Courts, and, consequently, may be said to be middle class. All members of the Committee are ethnically white.

1. **Inherent bias of this response**
  - 1.1 The whole of the legal profession appears to be condemned by the Consultation of being a closed shop. On reading the Consultation, unless you are a straight, white, male ex-public school boy, there appears to be no future for you in the law.
  - 1.2 The Consultation is predicated on the basis that straight, white, male ex-public school boys are attracted to be in business together or to work along side one another to the exclusion of everyone else. They are closed-minded and deliberately exclude from the ownership and management of firms anyone who is not a facsimile of themselves and their forefathers.
  - 1.3 Given that this response to the Consultation has been prepared by a group of individuals, the majority of whom the Consultation appears to brand as acting contrary to access to justice, the response must be suspected by the LSB as being motivated by that same self-interest. Anything we say here

will be put through the filters that dismiss opinions on the basis that, 'they would say that, wouldn't they?'

1.4 On taking opinions from members of the Society in connection with framing this response, members of the Committee were struck by the sincerity with which lawyers of all levels of experience, genders, racial and cultural backgrounds condemned the assumptions made by the LSB and voiced in the Consultation.

1.5 The assumption that we would deliberately ignore or reject talent that would enhance our respective businesses is truly crass. If someone has the ability then members of the Society do everything possible to ensure that they can practice to produce the best achievable profit. We represent people who work in the free market. They attract the best and the brightest people they can to work with them to make money from their legal practice. We are not a branch of government and are not primarily a charitable profession.

## 2. **What do we understand the LSB wants to do?**

2.1 At paragraph 7 of the Consultation the intention of the LSB to go beyond the general law is apparent:

*"We are not 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, beyond the general equality duties that already exist for the regulated community in law (e.g. non-discrimination) or requirements that are imposed by purchasers."*

2.2 We have no doubt that where a body is established with powers to regulate it will exercise them. Whether it does so in the best interests of the public is a matter for debate. The Legal Services Act 2007 (**LSA**) was intended to make access to justice simpler and cheaper. The consequences of additional regulation are additional cost, which will be passed on to the consumer.

2.3 Making regulated entities collect data on their workforce must have an objective other than merely observing social trends. At which stage will the LSB require regulators to impose quotas?

2.4 The collection of data as a regulatory requirement is an additional cost and administrative burden.

2.5 It is telling that the LSB was not able to get a better response from its own workforce to the intrusive and unnecessary questions about sexual attraction and so forth. We find it difficult to reconcile the proposed requirement to have all members of staff make declarations of this sort and the objectives of the LSA.

2.6 The political objectives of the LSB are made clear at paragraph 12 of the Consultation.

*"Embedding transparency as a regulatory requirement will provide consumers (both corporate and individual) with better information and enable firms or chambers to demonstrate their competitive edge based on a culture and ethos that values diversity. It will also lead to public*

*accountability and enable interest groups to highlight inequality and lobby for change.”*

2.7 The legal services industry should not be a political football for people with political agenda. That the LSB holds itself out as a facilitator of “... *interest groups to highlight inequality and lobby for change*” is a demonstration that the LSB has gone beyond the regulation of the professions offering regulated services here.

2.8 This paragraph 12 also demonstrates the false logic upon which much of the thinking of the Consultation is based. Firms do not “... *demonstrate their competitive edge based on a culture and ethos that values diversity*”. They do it by producing the best work and giving best advice to clients. Imposing quotas will bog down the British lawyers in an ever-increasing international battle for globalised business.

2.9 At paragraph 28 of the Consultation the LSB agrees it is to go beyond its LSA mandate in collecting data, let alone setting quotas and imposing positive discrimination:

*“We recognise that nothing in the 2010 Act obliges approved regulators to impose a requirement on regulated entities to collect and publish diversity data about their workforce. However, we find it difficult to see how the Board and approved regulators can comply with their duties under the 2010 Act or meet the regulatory objective under the 2007 Act, without an understanding of the existing make up of the legal workforce in relation to these characteristics.”*

2.10 We believe the LSB has twisted the requirements of the LSA to give itself a regulatory function which was not envisaged by the legislators in framing that Act.

### 3. **We are in the people business**

3.1 The provision of legal services is highly personal. The client and lawyer have to have a strong relationship of trust and confidence. If someone is disabled they do not necessarily wish to see a disabled lawyer. If someone makes a lifestyle choice they will not necessarily wish to take advice from someone who has made a similar choice, drug users, for example. Similarly, it is hugely insulting to imply that a straight man will not take advice from a gay lawyer, a lesbian from a male lawyer, a Muslim from a Jewish lawyer.

3.2 The Consultation displays a concern with small-minded prejudice that would leave any business in tatters. If prejudice exists, then those businesses demonstrating it will not survive. There is no reason for further regulation.

3.3 The implied threat that if we, as a profession, will not admit more people the LSB sees as victimised, quotas will be introduced is completely unacceptable. The LSB is not an agency of social control. Introducing quotas of any nominated group into firms cannot enhance the access to justice that the LSB calls in aid as the motivation for this suggested action. Quotas would result in economic damage to individual firms as the brightest and the best may be ignored because the successful candidate would have to fill a particular characteristic. Thereafter, that individual would be

classified by such characteristic – only appointed because of disability, ethnicity, gender, sexual preference, etc – and as such it would be entirely counter-productive.

- 3.4 The LSB must understand that the Society draws its membership from members of the Solicitors' profession in a predominantly white, middle class part of the South East of England. However, the majority of members are female. Many of those women are partners in their respective firms.
- 3.5 Those members of the Society the Committee contacted were aghast at the assumptions upon which the LSB has based a mission to make the legal profession something other than it is. This runs counter to all experience in most other countries, where the legal community is generally male, middle class and mainly of the indigenous population. Indeed, this country has a much greater diversity of legal professionals than in most other countries in the world.
- 3.6 Since lawyers first appeared, they have formed part of any society's political class. They are, almost by definition, middle class, and part of the intelligentsia. It is for this reason that lawyers are often the first to be shot and imprisoned by dictators of all kinds. The first thing to do after seizing power was to kill all the lawyers, according to Shakespeare. Stalin, Pinochet, and all the rest have taken that advice. And yet, the legal communities terrorised re-emerge in time. That they very much look like the profession that has been under the heel of the dictator must say something about the natural form of the business of supply of professional services to individuals and business.
- 3.7 There is no doubt that the way in which legal services will be delivered will change considerably over time. That is given. However, looking at the way in which the profession has grown and the number of people of all backgrounds now employed in it, we are of the opinion that there is no reason for the LSB to intervene in this area. Indeed, we believe that this is not an issue where action is needed, pursuant to section 3(3) of the LSA.
- 3.8 Evolution occurs whenever there is a business case. Unnecessary regulatory interference has predictable and unintended consequences. Laws, such as the Test Acts, that impose restrictions on individuals of a particular faith to practise a profession are as heinous as those which seek to prescribe who one must employ in any business.
- 3.9 In his recent report, "Women on Boards", Lord Davies of Abersoch rejected the introduction of statutory quotas as a means of improving female representation on boards. The Committee believes the reasoning adopted in his report applies equally to issues of ethnicity, social mobility, religious belief, sexual orientation and gender in the legal profession.
- 3.10 It is the view of the Committee that the LSB should not attempt to "encourage" an independent, strong, diverse and effective legal profession, pursuant to the LSA, through additional regulation and threatening quotas, as is implied as the next step in the Consultation. We suggest that if the Diversity Forum established by the LSB indicates that there is an educational need for regulated entities, this is a more appropriate approach rather than burdening the sector with regulations which owe more to social engineering than delivering access to justice.

- 3.11 The Committee is concerned that the LSB has set out an agenda in the Consultation which is neither proportionate to the issue nor is likely to improve the provision of legal services. The LSB has indicated that entities that serve particular ethnic or religious communities have a small number of owners. That is an indication of the business case for those businesses and not a reflection on the profession as a whole.

#### 4. **The period of consultation**

As on numerous previous occasions, we would observe that it is not possible for us to devote the time and attention to the task of making a response as we would otherwise wish. There has simply been insufficient time between the publication of the Consultation and the present for us to do more.

#### 5. **Question 1 - What are your views on our assessment of what diversity data is currently collected? Are there any other sources of data that we should be aware of?**

- 5.1 There is no appetite for collecting such data in the profession, as paragraph 34 of the Consultation demonstrates.
- 5.2 There is no appetite for collecting such data amongst clients, as paragraph 39 of the Consultation demonstrates.
- 5.3 The assertion of a competitive edge demonstrated by the publication of such statistics in paragraph 12 of the Consultation is shown to be false.

#### 6. **Question 2 - What are your views on our assessment of what the available diversity data tells us?**

- 6.1 There appears to be a move to see an increase in the size of firms. The idea appears to be that the larger the firm the more financially stable it is. Experience with firms over the years has shown this not necessarily to be the case, eg the failures of firms such as Halliwells, Hammonds Direct, and Turner Kenneth Brown.
- 6.2 If the LSB is putting pressure on the SRA and others to increase the size of regulated entities and demonstrate long-term capital stability, the Consultation attempts to shift any unwarranted pressure on firms employing or owned by BME Solicitors from the regulator on to the shoulders of members of the profession by suggesting that members of the profession generally, and the profession whole are racist.
- 6.3 We condemn any suggestion that any member of the profession is accused of racism on the basis of the statistics employed in the Consultation.
- 6.4 The Consultation is an old-fashioned, top-down, condescending approach which is the Marxist view of markets and their manipulation. Rather than take this outmoded and discredited tack, we suggest that the market is making the decision for law firms.
- 6.5 There is no place for the LSB to try to buck the market. In attempting to do so the LSB would facilitate lots of opportunities for "... *interest groups to highlight inequality and lobby for change*". We can look forward to all

manner of pressure groups to damage the 'brand' of Solicitors and the good reputations other professionals.

6.6 Make no mistake, once the 'brand' has been tarnished by misguided interventions by the regulators at the insistence of the LSB, the present status of 'trusted adviser' will be irredeemably lost.

6.7 The data suggests that the legal profession does very well in comparison with other professions. However, we are cautious of all statistics due to the manner in which statisticians can produce any predetermined outcome. One thing is sure, that women have babies. No amount of regulation will change biology nor will the social norms concerning the nurture of children change through the regulation of one profession.

6.8 When making a comparison of the legal with other professions it is clear that the proportion of BME in science-based sectors is higher than in a linguistic-based sector. This should cause no surprise to anyone.

7. **Question 3 - Is there other diversity research we should be aware of, that we did not take account of in our review of existing literature?**

7.1 We believe you should understand that there is no appetite for the sort of changes hinted at in the Consultation.

7.2 The poor response in the LSB itself to the questionnaire it proposes to impose is a reflection of the fact that the majority of people are, in fact, quite blind to issues of gender, sexual orientation, colour and ethnicity in the context of business.

7.3 We are concerned that because of the life-style choices of very few people the whole sector will be faced with additional and unnecessary financial and administrative burdens.

8. **Question 4 - Are there any other existing diversity initiatives run by approved regulators which are not reflected in our outline of current initiatives?**

8.1 The Consultation appears to condemn the fact that many people engaged in the legal sector have family connections with the law.

8.2 Inevitably, there will be the desire of many to 'follow in father's footsteps' and this applies to other professions, eg medicine, and trades, where '& Son' or '& Daughter' were common names in all sectors in the last century.

8.3 The Consultation suggests that social inequalities can be corrected by regulation. That is, again, a Marxist interpretation of social dynamics which the Committee rejects. The education of people is an issue which the LSB is not mandated to regulate. Yet education is the point at issue.

8.4 Paragraph 54 of the Consultation states:

*"... the culture of the profession is to change and become more open to innovation. We consider that diversity drives professionalism and business success, and that the culture of the profession needs to change to ensure*

*that ambitious and able individuals can thrive and progress regardless of their backgrounds or personal circumstances.”*

- 8.5 There is no doubt that where there is a need for a diverse profession the market will ensure the need is supplied. Having a diverse workforce will not result in business success. Having a highly educated workforce able to swiftly adapt to business circumstances and give the highest levels of service are assured by having the right individuals at the right levels in the organisation.
- 8.6 There is a lot of legislation which deals with issues of equality and we do not see why lawyers need to be additionally regulated beyond the general law.
- 8.7 We believe it is foolish to seek to regulate who firms may and may not employ. The Communists who tried this sort of thing caused an economic nightmare for those in Eastern Europe for years.
9. **Question 5 - What are your views on the immediate priorities for 2011 we have identified? If you disagree with our priorities in relation to equality and diversity, what should they be (bearing in mind the regulatory objectives, the Equality Act obligations and the Better Regulation principles)?**
- 9.1 We are of the view that the action proposed by the LSB are disproportionate to the perceived lack of diversity. The market will determine who is sufficiently educated and able to provide legal services within the legal and regulatory framework.
- 9.2 Treating diversity issues in isolation from the need to have a strong and independent legal profession. The introduction of any quota system would be highly damaging to the profession. Positive discrimination is rejected by BME Solicitors who wish to achieve through talent and energy and not through paternalistic liberalism.
- 9.3 Conducting annual surveys will result in damage to the relationship of employer and employee. We favour a 'don't ask, don't tell' approach to issues about sexuality. To do otherwise will result in embarrassment.
10. **Question 6- Do you agree that a more comprehensive evidence base is needed about the diversity make-up of the legal workforce?**
- 10.1 No.
- 10.2 No case has been made that the profession does not reflect the make up of the working community in England and Wales.
11. **Question 7 - What are your views on our proposal that in principle approved regulators should impose regulatory requirements on the entities they regulate, requiring them to publish data about the diversity make-up of their workforce?**
- 11.1 No.
- 11.2 Market forces will determine how businesses are staffed.

11.3 It is wholly unacceptable that the LSB should compel approved regulators (AR) to require the publication of such data.

12. **Question 8 - What form should the evaluation of existing initiatives take? Should there be a standard evaluation framework to enable comparison between initiatives?**

Unless there is compelling evidence to regulate this issue, no action needs to be taken at this point.

13. **Question 9 - What are your views on our position that regulatory requirements on entities to take specific action to improve performance (including targets) are not appropriate at this stage?**

13.1 No action needs to be taken at this point, nor in the foreseeable future.

13.2 We do not see this as a regulatory issue.

13.3 If the LSB has evidence concerning the educational attainments of prospective lawyers and legal staff demonstrating socio-economic issues they should report this to HM Government through the Ministry of Justice.

14. **Question 10 - Do you think we should issue statutory guidance to approved regulators about diversity data collection and transparency?**

14.1 No.

14.2 It is wholly unacceptable that the LSB should compel AR to collate and publish such data.

14.3 The market should decide these issues.

14.4 Pushing the legal profession into a corner will damage its reputation.

14.5 The LSB's assumptions of racism, misogyny and snobbery are wholly misplaced.

15. **Question 11 - What are your views on our proposal to agree standard data categories with approved regulators, to ensure comparability of diversity data within the legal workforce and with other external datasets?**

15.1 It is unnecessary.

15.2 There is no 'issue' to be addressed by the LSB from the points made in the Consultation.

15.3 We are of the view that the LSB is going beyond its statutory remit in making veiled threats to impose quotas if there is no appreciable change in a way that suits the views of the LSB.



16. **Question 12 - Do you have any comments about our proposals in relation to the individuals the data collection and transparency requirements should cover?**

16.1 Paragraph 90 suggests that the LSB has already determined its plans before the Consultation was published.

16.2 The constant repetition that the LSB is intending to conduct changes to the profession because it can does not amount to a justification under the auspices of the LSA.

16.3 If the intention is to impose regulations on Alternative Business Structures (**ABS**), as is suggested by paragraph 103 of the Consultation, what is to be the position of existing firms if a level playing field is to be maintained?

16.4 The LSB seems to have the view that lawyers are public servants and that regulations applicable to the civil service must apply to legal services entities. This is not the case.

16.5 Business needs to be free of the dead hand of the State wherever possible. Yet the LSB wishes to impose Eastern Bloc style regulatory burdens on business for no reason other than it appears to believe it can.

16.6 There is very considerable concern in the profession served by the Society that the LSB has gone beyond what is acceptable in this Consultation. Many law firms offer unrestricted legal advice and threatening future regulation on issues which do not affect the delivery of appropriate and independent advice may well split the profession.

17. **Question 13 - Should the framework include the collection of information on in-house lawyers?**

17.1 No.

18. **Question 14 - What impact do you consider these new regulatory requirements will have on regulated entities?**

18.1 As observed above, such inappropriate and unnecessary regulatory requirements may well split the profession.

18.2 Given the large number of firms being acquired by foreign entities, business law may well become a largely US owned sector before long if AR have to impose additional regulatory burdens. How will this benefit those consumers to have a completely unregulated sector?

18.3 We see this as the thin edge of the wedge which will do incalculable damage to the profession.

19. **Question 15 - What are your views on our proposal that in general firms and chambers should be required to collect data from their workforce annually, while smaller firms and chambers (fewer than 20 people) should only be required to collect the data every three years?**

19.1 It is an inappropriate and unnecessary regulatory burden that will cost money to administer and audit.

- 19.2 It will be divisive in the workplace.
- 19.3 Given the LSB's argument that there is no burden imposed, why then collect data on a different basis from differently sized entities?
20. **Question 16 - What are your views on our proposal that data should be collected about all the protected characteristics listed above, plus socio-economic background? If not, on what basis can the exclusion of one or more these characteristics be justified?**
- 20.1 Proposals in the Consultation go beyond the requirements of the general law.
- 20.2 The LSB seems to have the view that lawyers are public servants and that regulations applicable to the civil service must apply to privately owned legal services entities. This should not be the case.
- 20.3 Issues such as caring arrangements are not dealt with in the Consultation, which appears a considerable area in terms of access to the workplace. Over time caring for the elderly will become a greater issue.
- 20.4 We are also concerned that ability seems to have been omitted from the data collection proposed. How is it possible for anything other than very basic, if not crude, conclusions be drawn without reference to the qualifications and experience of individuals?
21. **Question 17 - Do you think that data should be collected anonymously or enable individuals to be identified (please explain the reason for your answer)?**
- 21.1 For the reasons given, we oppose the collection of such data as is proposed by the Consultation to be garnered.
- 21.2 We have demonstrated in the opening comments of this response that once issues of diversity are seen as drivers, no information about the individual will be free from inquiry. The previous position of enquiring if the work is good will then be beset with questions about the political correctness of the provider of the advice. We judge this to be counter-productive.
- 21.3 If firms wish to make disclosures voluntarily, eg 'we are a firm that is staffed only by women', we see that as being a matter for the individual business.
22. **Question 18 - Is there a way of integrating data collection with the practising certificate renewal process that still achieves our objective of transparency at entity level?**
- 22.1 This is the first step to making a disclosure to intrusive questions mandatory.
- 22.2 What if an individual refuses to say if he or she is attracted to the same sex? There will perhaps be a presumption that the person is homosexual by the people collating practising certificate applications. What someone does in the privacy of the bedroom should not be a matter of public knowledge unless they chose to make public or act in a way which might lead to censure, eg by committing a crime.

23. **Question 19 - Do you have any suggestions on how to improve the model questionnaire?**
- 23.1 We do not agree a questionnaire is necessary.
24. **Question 20 - What are your views on the proposed categorisation of status in the model questionnaire?**
- 24.1 We do not agree a questionnaire is necessary.
- 24.2 Statistics can be manipulated in any number of ways. When including all members of the workforce there will be additional scope for making errors in evaluation.
25. **Question 21 - What are your views on the proposed questions about job role as set out in the model questionnaire? Do you have suggestions about additional/better measures of seniority? Do you have suggestions on a category of measure to encompass a non-partner senior member of staff i.e. CEO who holds an influential or key role in decision-making of an organisation?**
- 25.1 We do not agree a questionnaire is necessary.
- 25.2 Statistics can be manipulated in any number of ways.
26. **Question 22 - Do you have any suggestions about how to measure seniority in the context of an ABS?**
- 26.1 We do not agree a questionnaire is necessary.
- 26.2 Statistics can be manipulated in any number of ways.
27. **Question 23 - Should we collect any additional information, such as that suggested in paragraph 129?**
- 27.1 We do not agree a questionnaire is necessary.
- 27.2 Statistics can be manipulated in any number of ways.
28. **Question 24 - Do you have any views on our proposed approach to collecting data on disability?**
- 28.1 We do not agree a questionnaire is necessary.
- 28.2 If firms wish to make disclosures voluntarily, we see that as being a matter for the individual business.
29. **Question 25 - What are your views on our proposed approach to collecting data on sexual identity?**
- 29.1 We do not agree a questionnaire is necessary.
- 29.2 What someone does in the privacy of the bedroom should not be a matter of public knowledge unless they chose to make public or act in a way which might lead to censure, eg by committing a crime.

30. **Question 26 - Do you think we should follow the Census approach to collecting data on religion and belief? If not, what alternative approach do you suggest?**
- 30.1 We do not agree a questionnaire is necessary.
31. **Question 27 - Do you think a question should be included in the model questionnaire about gender reassignment? If not, what other means should be used to build an evidence base in relation to gender reassignment issues in the legal workforce?**
- 31.1 We do not agree a questionnaire is necessary.
- 31.2 We do not agree that lifestyle choice is relevant to the regulation of legal services. The LSB would not be able to discern those who have made such a lifestyle choice and those with a clinical need to reassign gender.
32. **Question 28 - If a question is included on gender reassignment, do you agree with our proposed question?**
- 32.1 We do not agree a questionnaire is necessary.
- 32.2 The Committee believe if a transgendered person is right for the role they will fill it without individuals and firms having to give information of this kind to bureaucrats.
33. **Question 29 - What are your views on our proposed approach to include a question on caring responsibilities?**
- 33.1 We do not agree a questionnaire is necessary.
34. **Question 30 - What are your views on our proposed approach to measuring socio-economic background?**
- 34.1 We do not agree a questionnaire is necessary.
- 34.2 Social engineering should be left if Marxist theory and is not the role of the LSB.
35. **Question 31 - Do you have any comments about our proposed approach to publication requirements?**
- 35.1 If all firms were to make returns stating that all respondents refused to answer, presumably the LSB will then require AR to make rules requiring them to do so.
- 35.2 This really is not acceptable.
- 35.3 Voluntary disclosure in a mandatory scheme is bound to fail in time and the default setting for regulators is to require compliance, with sanctions to be imposed where there is no strict adherence.

36. **Question 32 - Do you have any views on special arrangements that should be considered for firms and chambers of all sizes when publicising sensitive information at different levels of seniority?**

36.1 The whole scheme proposed is wholly unacceptable and should be dropped.

36.2 That the Consultation includes veiled threats to impose requirements suggests to the Committee that the LSB should and must review its present and proposed activities in line with the requirements of the LSA and what the legal sector will accept.

36.3 The LSB is not operating in an academic vacuum and there will be dramatic consequences if the proposals in the Consultation are imposed.

37. **Question 33 - What are the main impacts likely to be on approved regulators when implementing this framework?**

37.1 We take the view that many firms will cease to be regulated and conduct non-reserved activities only.

37.2 There will be an entirely unregulated sector that will then require a whole new set of regulations at huge cost, particularly to the public.

37.3 The legal profession is already under strain from numerous causes. The LSB needs to look at core issues and stop trying to facilitate its own political agenda and that of other pressure groups.

I hope the foregoing is of assistance to you.

Yours sincerely



**Martin Varley**  
Chairman