

## **Response to the Legal Services Board's Draft Equality Scheme**

The BSB welcomes the opportunity to input into the LSBs Single Equality Scheme. The scheme is a welcome step on the road to establishing a corporate equality programme at the LSB which the BSB fully supports.

In the absence of specific consultation questions this response has been drafted using the following categories: General Comments, Aims and Objectives, Evidence Gathering, LSB as Employer, Monitoring, Trans Equality Issues, Impact Assessment, Consultation, Communication and Action Plan.

### **1. General Comments**

As the regulatory authority for barristers it is of concern to the BSB that the scheme makes only one reference to barristers, at paragraph 4.3 where the scheme sets out the profession regulated by the LSB. There are no further references to barristers in the remainder of the scheme. This omission makes it difficult for the BSB to appreciate fully the steps the LSB will be taking to further equality which will positively affect our work in this area.

The Scheme interprets the equality and diversity responsibilities of the LSB in a very narrow manner. Much of the Scheme emphasises the importance of the regulatory objective of encouraging a diverse profession and suggests that other regulatory objectives 'support' this e.g. Section 5.1. However this fails to take account of the need for the LSB to actively address and promote equality across its regulatory objectives, not least 'improving access to justice', 'protecting and promoting the public interest', and 'promoting and protecting the interests of consumers'. The LSB might wish to think about the need to address this broader perspective of its responsibilities in the Scheme which is also a requirement under the statutory equality duties.

The LSB might consider whether to extend the three areas of equality covered to reflect the seven strands covered in the 2009 Equality Bill, particularly given that the scheme is in draft. In particular the LSB should consider addressing socioeconomic issues given the emphasis on fair access to the professions.

## **2. Aims and objectives**

The scheme would benefit from a section detailing the LSB's overarching equality aims and objectives. The current section entitled "Our Equality and Diversity Objectives", at p. 16 of the scheme lists some of the equality objectives of the LSB whilst others are inserted throughout the text such as those at p.10 and some appearing towards the end of the document. This has the effect of giving those that appear later on in the scheme less weight than those appearing earlier.

The LSB might wish to consider re-structuring the document so that the aims and objectives section appears at the beginning of the scheme, setting out first the regulatory objectives followed by the equality aims and objectives supported by a sound evidence base. This would assist the reader in understanding the overall focus of the LSB's work in this area.

## **3. Evidence gathering**

The scheme might benefit from a separate section on evidence gathering. An area of concern for the BSB is the lack of a clear evidence base upon which the LSB has relied to formulate its equality objectives. The document refers to data on the number of barristers and solicitors in the profession however further data on the diversity of the profession would assist in terms of outlining the context and focus of the scheme and its action plan. There exists a wealth of statistical data on the legal profession as a whole, the BSB currently produces its own statistics on the make-up of the Bar and these are published annually and are widely available on the BSB website.

## **4. LSB as Employer**

Given that the LSB is introducing a performance management scheme early in 2010, it may wish to embed equality and diversity competencies within this. This will help the LSB to assess and develop these equality and diversity skills among its staff. We would also suggest that there is formal training for all staff on equality and diversity and that policy leads and the Board are trained in Equality Impact Assessments.

## 5. Monitoring

A section on monitoring would be useful. This would allow the LSB to clearly state what work is doing in this areas; at what key times monitoring is carried out, how monitoring is undertaken and what categories are being used. Such a section should state the LSB individual or team responsible for monitoring and how reviews are carried out. It would also be useful to include key performance indicators so that the LSB can measure progress.

The scheme proposes (at paragraph 6.1) that job agencies should try to find a minimum of 20% of candidates from 'traditionally under represented groups'. This commitment should be re-considered carefully to avoid potential unlawful positive discrimination. The LSB should review its current workforce representation, its senior management representation, Board composition and then seek advice on what actions are permitted under positive action legislation. It is also open to question to what extent the use of employment agencies to advertise and obtain candidates is compatible with an open and fair recruitment process.

## 6. Trans equality issues

Paragraph 3.2 of the scheme states:

*"We oppose and will seek to overcome (should be eliminate not "seek to" statutory duty is to "eliminate") all forms of unlawful or unfair discrimination on the grounds of a person's race or ethnicity, gender, sexual orientation, transgender or gender identity, disability, religion or belief and age in all aspects of our work".*

Trans people, as with most people, identify as male or female and therefore are not "other" than male or female. This makes trans equality issues gender equality issues. For these reasons it would be more appropriate to refer to gender identity alone rather than "transgender or gender identity".

Following an outline of the three equality duties relating to race, gender and disability, the scheme at paragraph 5.2 states:

*"These responsibilities are the three 'general duties' to promote equality and our Equality Scheme addresses all three duties. A framework will be developed at a future date to include*

*any further duties that we must promote, including, for example, age, religion or belief, sexual orientation and transgender issues”*

The LSB, as with all other listed public bodies, is legally obligated to have due regard to the need to eliminate unlawful sex discrimination and harassment and this includes trans people. Work on trans equality issues is therefore something that the LSB is required to consider now rather than at a future date.

## **7. Impact Assessments:**

The scheme would benefit from a dedicated section on equality impact assessments.

The section should detail the LSB process for EIA, training for staff on undertaking EIAs and details of when and where EIA results will be published.

The scheme makes reference at paragraph 7.1, to previous discussion documents regarding ABS and claims that these have explored the potential impact of the introduction of the ABS on specific individuals and groups within the legal sector. The BSB is concerned that the documents referred to do not cover this area in sufficient depth and would refer the LSB to previous correspondence from the BSB on this point.

Paragraph 10.2 states that the LSB is in the process of “developing a framework for Equality Impact Assessments”. It would have been useful for this framework to have been included within the scheme so that consultation on it could have been a part of the scheme consultation.

A variety of sources of evidence are mentioned for informing impact assessments but no mention is made of consultation. This is a key tool for informing equality impact assessments.

It is positive to see that the LSB Board will ensure that all papers submitted for its consideration will include a section on equality and diversity. The BSB would recommend including the relevant impact assessment completed or a summary where appropriate.

## **8. Consultation**

The scheme currently has no dedicated section on the LSB's consultation and engagement processes. The LSB's approach to consultation and engagement with its many stakeholders should be incorporated within a policy, summarised in this scheme.

Such a policy would cover the areas of work where consultation with different groups is likely to occur and also set out the particular equality groups whose input is utilised for the purposes of equality impact assessment.

As part of its consultations framework the LSB may wish to identify which specific minority groups and representative bodies it wishes to consult with in order to inform its Impact Assessments. Building this early into the consultation and policy development process will help the LSB ensure that such matters are addressed at an early stage.

The scheme should detail the equality organisations consulted so that the reader is assured the equality strands have been covered with equal weight.

## **9. Communication**

At paragraph 10.3, the scheme states that it will be available on the website which has been built according to "relevant standards". It would be useful to state which standards have been followed and their relevance to disability equality considerations.

The scheme states that the LSB is investigating its obligations under the Welsh Language Scheme to translate policies into Welsh. As this action has clear race equality implications it might have been prudent to consider this prior to the drafting of the scheme so that the results of the LSB investigations into this area could have appeared in the scheme.

## **10. The Action Plan**

It is noticeable that the scheme's action plan does not mention equality or diversity. Clear equality actions linked to performance indicators and targets would assist the

reader in understanding how the LSB intends to give life to the principles set out in the main body of the scheme. This would also assist in monitoring and review of the scheme as required by law.

The action plan should state the individual responsible for each action rather than references to general teams. This would allow such individuals to take ownership for actions against their names, or job title, and would help prevent such actions being ignored.

The action plan lacks specific timescales. Referring to completion occurring at some time in 2010 does not give a clear indication of when a particular task will be completed or target achieved. The inclusion of tangible timescales would provide parameters for the scheme and would also allow the LSB to monitor the progress of its actions.

The Action Plan proposes that the regulators themselves consider developing a procurement standard similar to the Law Society Charter “to encourage measurable outcomes” for the approved regulators. This action confuses encouraging the regulators to develop outcomes measures on equality and diversity for their professions with one particular action that may help in achieving some of these outcomes. It would be better to have separate actions that encourage:

- the development of equality and diversity outcome measures for the ARs,
- the development and promotion of equality and diversity standards for the profession; and
- developing appropriate mechanisms to encourage the take up of these standards. This can be achieved not just through procurement mechanisms but also monitoring schemes and broader quality standards.

*Bar Standards Board  
February 2010.*