



Response of the Patent Regulation Board and
the Trade Mark Regulation Board
(together as “IPReg”)
to the
consultation paper on proposals to increase
diversity and social mobility in the legal
workforce

Introduction

- 1.1 This Response is submitted by the Intellectual Property Regulation Board. The Intellectual Property Regulation Board (IPReg) comprises includes the Patent Regulation Board and the Trade Mark Regulation Board acting together on behalf of the Approved Regulators the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys to regulate the Patent Attorney and Trade Mark Attorney professions.
- 1.2 As a general principle IPReg fully supports and is fully committed to the encouragement and growth of diversity in the legal profession. Notwithstanding it may not agree fully with the specific issues raised in the Paper, its comments should be viewed against that general position.
- 1.3 Our responses are as follows.

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?

So far as IPReg is aware the assessment is accurate. We are not aware of other relevant material.

Question 2

What are your views on our assessment of what the available diversity data tells us?

Whilst we do not know the underlying basis of the assessment, insofar as the material is presented in the Paper, it appears to be a fair representation.

However, we note the assertion in the text supporting the Question that there are strong arguments that the delivery of the regulatory objectives requires a diverse legal **workforce**, and that the rest of the paper is predicated on that basis.

Whilst it may be that in principle that is a desirable outcome (we lack the evidence to form a view), we note that the “strong arguments” are not outlined in detail and that **the regulatory objectives in the Legal Services Act 2007 specifically refer to the profession, not the workforce.**

We question whether the argument for extending the interpretation of the objectives (as set out in statute) to include the “workforce” is in fact justified or proportionate. Quite apart from the extra burden on ARs and regulated bodies, we believe there should be greater debate as to whether the publication of statistics for support staff would promote the regulatory objectives or be of any measurable relevance to consumer choice.

This is particularly relevant to members of the profession who work “in house” whether in corporate or, particularly in the case of patent attorneys, in industry. Who is “the workforce” in those cases?

The collection of statistics by the LSB should also be considered in the context of the implementation of new equality legislation which will apply across all businesses. There is a risk of unnecessary bureaucracy.

We also have doubts as to whether it is intended (and we strongly consider that it is not appropriate) to survey any member of the “workforce” below the age of 18, particularly as regards sexual orientation, gender reassignment, religion, and pregnancy/maternity.

We also note that “workforce” is not defined, and submit this is essential before considering the extension of the proposals in this way.

We respectfully submit that the inclusion of the workforce as a whole requires more detailed informed debate, or that it should perhaps held in abeyance until experience of measuring diversity in the Professions themselves has been obtained.

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?

Entry to the Patent Profession is currently dependent on achieving science qualifications. There is evidence that entry to these academic disciplines is not diverse, which inevitably leads to a lack of diversity in the Patent profession quite apart from any other barriers there might be. There should be investigation into whether there is research available concerning diversity, or the reasons for the lack of it, in the academic science disciplines.

Question 4

Are there any other existing diversity initiatives run by approved regulators which are not reflected in our outline of current initiatives?

IPReg is not aware of any.

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)?

Save as regards our reservations concerning the application of the proposals to the workforce rather than just to regulated persons, the priorities are appropriate.

Question 6

Do you agree that a more comprehensive evidence base is needed about the diversity make-up of the legal workforce?

We agree that a more comprehensive evidence base is required, whether this concerns the professions or the general workforce.

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?

Subject to proportionality, particularly as regards small entities, and our reservations concerning the application of the proposal to the wide workforce, we agree with the proposal.

Question 8

What form should the evaluation of existing initiatives take? Should there be a standard evaluation framework to enable comparison between initiatives?

We have no view on the first question. We agree with the second question.

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?

We agree.

Question 10

Do you think we should issue statutory guidance to approved regulators about diversity data collection and transparency?

Yes.

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?

We agree.

Question 12

Do you have any comments about our proposals in relation to the individuals the data collection and transparency requirements should cover?

As previously indicated, we are not convinced by the arguments put forward in the Paper that the requirements should extend to the entire legal workforce, or indeed that the Board has power to order that extension. We believe that this should be the subject of further debate and research as to its relevance.

We also submit that none of these proposals should extend to persons below the age of 18.

We agree with the exemption of sole practitioners, but ask for clarification as to whether a sole practitioner with any support staff would fall within the definition.

Question 13

Should the framework include the collection of information on in-house lawyers?

Yes.

Question 14

What impact do you consider these new regulatory requirements will have on regulated entities?

The impact is likely to be disproportionately high for smaller entities, given the inevitable pressure on resources.

Given that some of the data is highly personal and sensitive, even where collected anonymously considerable effort will have to be put in to ensuring that privacy is maintained. That does not seem to have been considered.

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?

The Board will have noted our reservations about the extension of the proposal to the workforce. Subject to that reservation, we agree with the exception that we suggest data on firms of less than 5 staff is likely to be statistically insignificant and incapable of meaningful analysis. We propose that in addition to sole practitioners, firms of less than 5 staff should be exempt.

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?

We agree with the proposal.

Question 17

Do you think that data should be collected anonymously or enable individuals to be identified (please explain the reason for your answer)?

The data should be collected anonymously. If Respondents are identified, even the answer “prefer not to say” may become the subject of public speculation and the drawing of inferences which may be damaging professionally or personally. In addition, such personal questions are inherently intrusive and adding an identification requirement is likely to create greater discomfort/embarrassment. The survey should minimize personal discomfort as far as possible. Finally, as noted by the Paper, requiring identification may deter openness, thereby defeating the object.

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?

We cannot think of one.

Question 19

Do you have any suggestions on how to improve the model questionnaire?

The current language would be daunting if not worrying for many in the workforce at large. It should be made more “user friendly” in that context.

Question 20

What are your views on the proposed categorisation of status in the model questionnaire?

We agree with it.

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?

We agree with the model. We also agree that senior non-legal management should be included, as this is increasingly the management form of large regulated entities.

Question 22

Do you have any suggestions about how to measure seniority in the context of an ABS?

Not at this time.

Question 23

Should we collect any additional information, such as that suggested in paragraph 129?

To minimize disruption and to keep the surveys proportionate, additional information should only be added if there is a demonstrated and serious need (as opposed to a desire) for its collection. We do not consider the examples listed have been shown to be relevant or necessary for the purpose of a diversity survey or the achievement of the objectives.

Question 24

Do you have any views on our proposed approach to collecting data on disability?

We concur with the approach.

Question 25

What are your views on our proposed approach to collecting data on sexual identity?

We concur with the question save that it should not be put to eighteen.

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?

It could be thought ironic if a survey intended to encourage diversity then asked a closed question suggesting religious belief was a "norm". We agree with the BHA approach.

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?

We are not aware of any evidence to suggest this is a diversity issue and consider the question is unlikely to yield anything of statistical relevance, nor do we see any evidence to show it is relevant to the consumer. The resources expended could be better used. In addition, the question is highly sensitive and personal, and should not be asked unless there is a demonstrated and serious need for the data. We suggest that other bodies tasked with investigating such issues in the whole UK workforce are better placed to carry out such research for the time being.

Question 28

If a question is included on gender reassignment, do you agree with our proposed question?

Yes, save that the question should not be put to persons under the age of eighteen.

Question 29

What are your views on our proposed approach to include a question on caring responsibilities?

We agree with it but question whether it should be put to persons under the age of eighteen.

Question 30

What are your views on our proposed approach to measuring socio-economic background?

There may be sensitivity to such a question in the wider workforce. We submit it is appropriate and relevant only to Professional Respondents.

Question 31

Do you have any comments about our proposed approach to publication requirements?

In the case of websites, provided the data is clearly identified on a “site map” that should be sufficient as a minimum requirement, absent some actual evidence, rather than suspicion, that the data might be “tucked away”. If the evidence of experience shows otherwise, then appropriate safeguards can be enacted.

It is vital individuals can be made aware not just that they may decline to answer but that if they choose to answer they may be identifiable. It follows there must be an assessment of how particular pieces of data will be presented so that the individual can make an informed choice about the risk of disclosure/identification.

We think the risks are particularly acute for very small entities, and given the information within such firms is unlikely to be statistically relevant compared to wider society there is much to be said for exempting them from the publication requirement. The AR can publish aggregated data for such firms. We suggest this applies to entities numbering 5 or less.

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?

To avoid the risk of identification in small groups, we suggest an exempt group size of less than 10.

Question 33

What are the main impacts likely to be on approved regulators when implementing this framework?

As always, cost and resources, especially for smaller ARs such as IPReg. It must also be remembered that European Patent Attorneys within UK firms need not hold regulated person status. Extending the survey to non-regulated Professionals may give rise to difficulties.

For and on behalf of the Patent Regulation Board and the Trade Mark Regulation Board – March 2011