



**A RESPONSE BY ILEX PROFESSIONAL
STANDARDS LIMITED**

**INCREASING DIVERSITY AND SOCIAL MOBILITY
IN THE LEGAL WORKFORCE: TRANSPARENCY
AND EVIDENCE**

**CONSULTATION BY THE LEGAL SERVICES
BOARD ON PROPOSALS TO INCREASE
DIVERSITY AND SOCIAL MOBILITY IN THE
LEGAL WORKFORCE**

DATE: 9 MARCH 2011

ILEX Professional Standards

This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Legal Executives. Legal Executives are members of the Institute of Legal Executives (ILEX). ILEX is the professional body representing 22,000 qualified and trainee Legal Executives and is an Approved Regulator under the Legal Services Act 2007 (LSA 07).

ILEX and IPS are committed to regulating Legal Executive businesses and businesses in which Legal Executives are partners and managers by 2012. IPS will establish regulatory arrangements that not only comply with the requirements of the LSA 07 and with any regulations made by the Legal Services Board (LSB) under the LSA 07 but that also provide public protection.

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?

The Black Solicitors Network (BSN) has produced an annual Diversity League Table since 2006. In 2009, 49 solicitors firms took part (of 180 which were invited), along with 23 barristers chambers (of 60 which were invited to take part). The responses received by the Black Solicitors Network (BSN) were extremely low especially from solicitors firms. 27% of solicitors firms responded whilst 38% of barristers chambers responded. A low response rate is an issue which needs to be addressed. If entities are required to collect data, response rates may increase but again it will be dependent upon whether individuals choose to make a response. It would be interesting to ascertain whether the surveys administered by BSN were anonymous. Anonymity may affect the number of individuals/firms/chambers that reply to such surveys. However, this may also reveal the attitude of the legal workforce towards such questionnaires/surveys.

The Law Society Diversity and Inclusion Charter was launched in 2009. Over 160 practices have signed up to the Charter. IPS noted that of the 82 signatories who committed to the Charter before April 2010, over 90% collect data on age, gender, ethnicity and disability and more than 50% cover sexual orientation and religion. Figures from the Law Society Diversity and Inclusion Charter are notable especially in the area of sexual orientation and religion which are considered to be sensitive areas.

As well as the above organisations, a number of firms/chambers already publish diversity information. Nevertheless, IPS agrees that there still remains a lack of data about many aspects of diversity in the legal workforce. There needs to be a cultural change. The LSB suggest that the moral case for change may not be enough but that consumer demand is more likely to impact on diversity. However, consumer demand is not a factor ARs can control.

On the whole data collection appears to be piecemeal. Collection needs to be comprehensive preferably with collection against the same equality strands. It is therefore difficult to undertake a meaningful assessment of the data currently collected due to its piecemeal nature.

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

The figures provided in the consultation clearly show disparity between BME/women and white/males in relation to progression in the law and pay. Paragraph 42 of the consultation refers to an overrepresentation of white graduates from higher socio-economic backgrounds in large city firms. For this reason a model questionnaire should include questions on practice area and type and size of firm.

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

IPS is unable to comment.

4. Are there any other existing diversity initiatives run by Approved Regulators which are not reflected in our outline of current initiatives?

IPS is unable to comment.

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)?

The immediate priorities identified for 2011 include:

- gathering an evidence base about the composition of the workforce;
- evaluating the effectiveness and impact of existing diversity initiatives; and
- promoting transparency about workforce diversity at entity level as an incentive on owners/managers to take action.

Evidence base

There is currently a lack of data on many aspects of diversity in the legal workforces. Therefore, creating an evidence base is the first immediate priority.

A lot of work has been planned for 2011 in each priority area. Gathering an evidence base alone will take a substantial amount of time as the data will be collected about everyone that works within an entity. Entities will need time to issue questionnaires, collect and publish results and report to ARs. Similarly it

will be beneficial to ARs if data collection can be tied in with other activities, such as annual returns.

Effectiveness of initiatives

The LSB acknowledges that there is significant commitment demonstrated by professional bodies, interest groups, education providers and individual firms and chambers to initiatives to encourage greater diversity in the profession.

Despite the number of initiatives, there is no systematic approach taken to evaluating the impact and effectiveness of the diversity initiatives. IPS agrees that a standardised approach to evaluation should be taken to enable the relative effectiveness of different initiatives to be compared. Once the effectiveness of initiatives are evaluated and an evidence base established, decisions can be made about how resources can be targeted on future initiatives in the most efficient way.

Promoting transparency

Transparency has been identified as a powerful incentive to change behaviour. Publication opens the publicised information up to a greater level of scrutiny and increases accountability. Transparency requirements compel firms and chambers to translate their commitment to increasing diversity and social mobility into action.

IPS agrees that such commitment starts at the individual level where each ARs Code of Conduct should set out a professional obligation to adhere to a set of rules on conduct in relation to equality and diversity issues. ILEX's Code of Conduct requires ILEX members to treat everyone equally and fairly regardless of their age, gender, disability, race, colour, ethnic or national origin, sexual orientation, marital or family status, religion, belief or perceived social status.

The LSB will need to set realistic goals for 2011 in relation to promoting transparency. The other immediate priorities may take up the majority of 2011, leaving little or no time to focus on transparency issues.

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

As mentioned above, there is currently a lack of data on many aspects of diversity in the legal workforce. IPS agrees that policy interventions and initiatives should be targeted, proportionate, and based on evidence. Without an evidence base to underpin the LSBs approach, policy and interventions are less likely to succeed and may result in resources being expended unnecessarily or inefficiently. Creating an evidence base is the first immediate priority. However it is a task that will take time.

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?

ARs should impose regulatory requirements on the entities they regulate, requiring them to publish data about the diversity make-up of their workforce. At the same time, ARs should be able to be flexible with the entities they regulate to ensure that the requirement does not create an unnecessary burden. ARs may need to be particularly flexible with small firms that may have limited resources to implement the necessary changes at the same pace as larger firms can. It should also be considered whether publication by small firms risks consumers discriminating against them by taking their business elsewhere.

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

A standard evaluation framework should be agreed, especially to cover different ARs. The whole process needs to be incremental and the LSB should not expect that it can be achieved immediately.

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?

IPS is of the view that before targets and specific action requirements can be considered, data should be collected and frameworks devised. IPS agrees ARs should not seek to impose requirements on entities to change the diversity of their workforce. It should be recognised that in many instances it is impossible to do so.

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

IPS is of the view that before statutory guidance should be issued, the LSB should engage in collaborative work with ARs to assess and review current data collection and transparency arrangements.

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?

Standard data categories should be agreed with ARs to ensure comparability of diversity data. Ensuring comparability will resolve the problem surrounding the piecemeal nature of data currently available.

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

IPS agrees that the entire workforce should be covered, including in-house legal staff. Collection methods, whether administered by ARs or entities, should avoid duplication.

IPS would like to highlight that there could be authorised persons, who are missed out from data collection, because they are providing non-reserved legal services in an entity not regulated by an AR who regulates entities. Therefore some ARs may have to collect data from individuals. ILEX members will mostly work in entities regulated by other ARs. Therefore consideration will need to be given to which AR collects data about them, to avoid any duplication in collection.

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

The framework should include the collection of information on in-house lawyers. The consultation did not adequately outline why in-house lawyers should not be included. In-house lawyers are part of a regulatory community that make up the legal workforce and they provide legal services. Arguably, if in-house lawyers are not covered, non regulated employees in entities should not be covered. If data collection on in-house lawyers is not covered separately, they will get missed out as they are not part of a regulated entity.

Equality, diversity and social mobility should not solely be looked at from a commercial perspective whereby it is based on the demand of consumers for services from a firm that is diverse. The issue should be looked at morally whereby it is assessed whether the legal profession is one where individuals can thrive and progress regardless of their backgrounds and personal circumstances.

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

There will be a resource impact on regulated entities in surveying their members/employees and collating and publishing results. Some administrative effort will be required to consider the results and prepare summaries. IPS is of the view that the impact on firms will be manageable and that the requirements are justified by the nature of the challenges outlined in the consultation. To reduce the impact on entities an appropriate course of action might be to collect data, although separately, at the same time as other data collection or annual returns are made.

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?

IPS disagrees with this approach. If firms are required to collect data at different periods according to their size the data collected on a whole, will be less comparable in the years when some firms do not collect data and therefore, will be an inaccurate reflection of the entire legal workforce.

In the consultation, the LSB suggests that small organisations are likely to have relatively low turnover of staff so should be required to complete data collection every three years. However, there is a risk that turnover within small firms and larger firms will be similar.

The impact on small firms' resources, to comply with collection and transparency requirements, will be greater than on larger firms. An alternative could be that all size firms be required to collect data at greater intervals, for example every two years. That will reduce the burden on all firms and allow for full comparability of information.

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?

IPS agrees that data should be collected about all the protected characteristics listed in the consultation including socio-economic background. Collecting data on socio-economic background will enable more sophisticated analysis of social mobility. ILEX has a particular stronghold in this area, as evidenced in a membership survey run by ILEX in 2008/9 which showed that neither parents of over 82% of respondents had attended university.

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

If the data were to include a name or other unique identifier, it would be sensitive personal data for the purposes of the Data Protection Act 1998. As a result the AR or entity would not be able to publish the respondent's name or other unique identifier. They will have to put in place adequate systems to safeguard the information. To avoid such risks anonymous data collection is preferred.

18. Is there a way of integrating data collection with the practising certificate renewal process that still achieves our objective of transparency at entry level?

Data collection could be integrated with the practising certificate renewal process, whereby questionnaires could be sent to members along with practicing renewal forms. In order for the process to remain anonymous, forms would need to be generic, with no identifier that could allow the forms to be traced back to the individual member. The forms could be sent to members separately to practicing renewal forms but as part of the same package and thereby allow separate return to ensure that data remained anonymous.

The LSB may want to base its decision on which approach will increase the current evidence base, especially in the area of sexual orientation and religion, characteristics of which there is little data. The issue is an important one especially given the voluntary nature of surveys and evidence of low response rates to similar surveys in the past.

Collecting data as part of practising certificate renewals may improve response rates with individuals being more inclined to respond to surveys administered by ARs. Furthermore, individuals may be more inclined to answer particularly sensitive questions as the information would be held by the AR as opposed to firm. However, if firms are then required to publish the data to fulfil transparency requirements, individuals may then be less inclined to answer sensitive questions, when informed of the intended use of the data.

The disadvantages of ARs collecting data as part of practising certificate renewals possibly outweigh the advantages. For the majority of ARs, data collection would be limited to authorised persons and the approach would not support the objective of putting the onus on firms/chambers to collect and publish data. This could result in firms being more removed from issues of diversity and social mobility and therefore having less impetus to make positive changes. IPS agrees with the LSBs suggestion in paragraph 159 that the requirement should be on entities to request data from members/employees and publish the results, including response rates.

The majority of Legal Executives work in firms regulated by the Solicitors Regulation Authority or Council for Licensed Conveyancers therefore there is a risk of duplication by the entity and the individual and entity regulator. Whichever method is decided on, safeguards against duplication need to be put in place.

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

The model questionnaire includes appropriate questions on each of the equality characteristics. However, two questions in particular may need revising. In

question 10(b) respondents should be given the opportunity to quantify the period of time for which they attended at a state/fee paying school. Furthermore 'occasional' in question 2(d) may need defining. There are also some adjustments needed to question numbering.

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

IPS has no comments to make on the proposed categorisation of status in the model questionnaire.

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 measure 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?

In relation to job profiles the LSB has taken the appropriate line of questioning. The suggested questions should reveal the level of autonomy the respondent has within their organisation.

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

Initially the same questions in the job role section in the model questionnaire could be used for ABS. The business models of ABS are currently unknown. Therefore it is too early to suggest an alternative way to measure seniority in an ABS.

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

There is a range of additional data that could be collected about respondents to enable more sophisticated analysis. The possibilities listed in paragraph 129 include country of first qualification, nationality, size and type of firm and practice area. In relation to country of first qualification and nationality, the LSB will need to specify the relevance for collecting such data and what it will help the LSB achieve, in order for IPS to comment.

IPS agrees with questions regarding size and type of firm and practice area being included in the model questionnaire. It is those other areas that will help ARs begin to understand the experiences and perceptions of those who are 'part of the legal workforce or aspire to be a part of it', (paragraph 50).

To begin to understand diversity and social mobility, ARs need not only look at the diversity characteristics themselves but need to also look at the careers of those with more diverse characteristics. It is those questions that are missing from the questionnaire (with the exception of question 2 and 10). If, as suggested in paragraph 51, barriers are present at every stage of an aspiring lawyer's career, questions to reflect the different stages should be included in the questionnaire. The barriers individuals face informs the choices they make. Therefore there should be questions about initial education, university, work experience, post-graduate education, training contract or pupillage and career progression. 'To understand the experiences and perceptions of those who are part of the legal workforce or aspire to be a part of it' we cannot solely assess data of the last stage in a lawyer's career path (career progression) and miss out on all the prior stages. Each stage tells a story and has a resultant impact on the final stage of career progression. However, such data can only be collected at the point at which an individual falls within the ambit of an AR or entity, depending on who will collect the data. Therefore such data will not be complete as it will fail to capture many individuals who do not reach that stage.

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

IPS has no comments to make on the proposed approach to collecting data on disability.

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

IPS has no comments to make on the proposed approach to collecting data on sexual identity.

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?

IPS agrees with the use of the Census model to collecting data. The Census model is widely used and will allow comparability with other data.

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?

A question regarding gender reassignment should be included in the model questionnaire. IPS also takes the view that a separate question should be asked on sex and should not be included in this category.

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

IPS agrees with the proposed question.

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

A question on caring responsibilities should be included in the model questionnaire. The question is a good way of gathering information on paternity, however, the proposed question would not necessarily reveal if the respondent looks after their children. A respondent may have children under the age of 18 but not deem themselves to be in a caring role.

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

The proposed approach to measuring socio-economic background is adequate. As mentioned above, the LSB will need to enable respondents to quantify their attendance at a state/fee paying school.

To enable more sophisticated analysis of socio-economic background, questions in relation to the start of a respondent's career may be helpful. For example respondents could be asked whether their studies (undergraduate degree, postgraduate qualification) were fully/partly state funded or privately funded.

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

IPS agrees with the LSB's publication requirements. ARs will need to consider publication alternatives for firms that do not have websites. Publication may affect the willingness of individuals to respond to questions concerning sensitive personal information. Fundamentally, a safeguard is provided whereby individuals must be made aware that providing the data is voluntary. There must also be clarity about the form in which the information will be published.

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?

If data (sensitive or non-sensitive) is provided anonymously and voluntarily by an individual, with clarity about the purposes for which it will be used, then the processing of their data within the Data Protection Act 1998 definition will be done with their consent.

There is the possibility that an individual could be identified from anonymised data through a process of elimination whether the firm is small or whether the information is broken down by levels the seniority. If connections between characteristics are not publicised, the public would not be able to decipher who the data relates to. IPS agrees that therefore, aggregate data for the whole organisation should be published and there should not be a different publication requirement on smaller organisations.

Anonymity within entities may be an issue whereby the employee administering data collection may be able to identify individuals in their workplace, through a process of elimination. Entities must ensure they fulfil their duty of confidentiality towards their employees whilst at the same time publishing data on the make up of the firm. It should be noted that this carries a risk that individuals may not provide data or may not provide it accurately.

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

IPS recognises that implementing data collection and publication requirements on regulated entities is a new strand of work which will inevitably involve a resource impact.

The level of impact depends on the approach taken by the LSB. If the LSB ultimately decides that entities will be responsible for data collection and will report results to their entity regulator, IPS envisages there to be less impact on its resources. There will be a resource implication whichever collection method is decided upon, as ARs are required to evaluate data and pass the information to the LSB.

In the consultation the LSB suggest that ARs should be able to provide support in the form of spreadsheets to minimise the efforts required by entities to consider and summarise the results. IPS agrees that spreadsheets could be issued by ARs as it will ensure consistency in the evaluation of results. The additional support ARs may be expected to provide entities should be noted as a further impact on ARs.

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