

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

Chris Kenny  
Chief Executive  
Legal Services Board  
Victoria House  
Southampton Row  
London  
WC1B 4AD

8 March 2011

*Dear Chris,*

**RE: LSB consultation on increasing diversity and social mobility in the legal workforce**

Further to your letter dated 15<sup>th</sup> December 2010 and attached consultation paper, please find enclosed the BSB response.

Your letter dated 15 December 2010 requested information on a number of issues dealt with in turn below.

**1. An assessment of the BSB's current evidence base about the diversity of the Bar**

Please see attached summary of data and analysis at Annex A and B.

As you will be aware, the BSB consultation on proposed new equality provisions of the Code of Conduct for the Bar sets out new requirements requiring chambers regularly to review:

- (a) the number and percentages of barristers and pupils from different groups;
- (b) applications for mini-pupillage, pupillage, and membership of chambers;
- (c) the allocation of work to pupils, barristers of less than four years' standing and barristers returning from parental leave.

This review must include, but is not limited to:

- (a) collecting and analysing data broken down by race and gender (and in all probability disability);
- (b) investigate the reasons for any disparities in that data; and
- (c) taking appropriate remedial action.

Therefore we expect that following the implementation of the revised Code of Conduct, chambers will regularly gather equality data on its workforce and that these requirements will be monitored through the BSB's Chambers Monitoring Scheme.

## **2. An outline of how the BSB proposes to promote transparency at entity level including where appropriate a detailed implementation plan**

The BSB is not at present an entity regulator and therefore we are not in a position to require any entity to provide information to us. However it is possible for the BSB to place data collection requirements on Heads of Chambers or on individual barristers to ensure the relevant data collection systems are in place at their place of work.

At this stage it is not possible to provide a detailed implementation plan setting out how the BSB will implement the proposed requirements as the LSB's exact requirements are yet to be established.

In order to develop an implementation plan it would be helpful if you could clarify:

- What diversity for a small chambers looks like. Is it your intention that each set of chambers reflects the diversity of society? What is the intended objective of this project in terms of diversity makeup?

It is difficult to evaluate progress of this initiative without a clear indication of what the LSB seeks to achieve in terms of chambers diversity and therefore we await further information before drafting an implementation plan.

- How you expect that these proposals will enable the ARs to meet the priorities set out at p. 19 of the consultation paper.
- Timescales for the project including the dates by which you expect:
  - The BSB to have developed the new regulatory requirements
  - Chambers to have started collecting diversity data
  - Chambers to have published diversity data
  - The BSB to have analysed and aggregated entity level data
  - The BSB to submit its first report on data on the profession to the LSB.
- Your decision regarding whether or not chambers of all sizes will be required to publish diversity data.
- How you will oversee the project and measure its success or failure.
- How diversity data should be presented in annual reports and published at entity level.
- What guidance you will provide to ARs on taking action against chambers "to improve their diversity makeup"<sup>1</sup>.
- Your final position on which protected characteristics data collection will cover.
- Whether pupils are to be included in this project.
- What guidance you will provide to ARs on carrying out anonymous surveys as opposed to gathering diversity data through the practising certificate renewal process.

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<sup>1</sup> Paragraph 7 p.3

- How you envisage ARs should “investigate the issue of pregnancy and maternity<sup>2n</sup> with the profession. We are unclear as to what investigation you expect ARs to undertake. Clearly this requirement could encompass the gathering of qualitative and/or quantitative data on parental leave provisions, policies, instances of pregnancy, childcare responsibilities or return to work issues.
- Whether the requirement to publish is a requirement to publish online or in other formats.
- How personal information will be protected if data is to be broken down by levels of seniority in chambers.
- Whether it is intended that transparency on this level is an interim measure or whether you intend to impose these requirements on a permanent basis.
- How you intend to evaluate the progress of this initiative.

Should these proposals become requirements of the BSB, it is likely that the data would be gathered from the profession via the practising certificate renewal process, although obviously this will not pick up data from pupils other than those in their third six.

The data would be stored on the BSB’s new core database system detailed below, from which regular reports could be generated. The BSB’s Chambers Monitoring Scheme could be used both to evaluate the impact of the new regulations and monitor compliance with them. In line with an outcomes focused regulatory approach, non-compliance would be dealt with by the BSB’s Professional Conduct team, with disciplinary action being used as a last resort. Compliance data gathered through the Monitoring Scheme could be analysed according to size and location of chambers and could be used to assess the regulatory burden of the requirements so that guidance can be targeted accordingly.

### **3. An explanation of the steps the BSB already takes to ensure that diversity initiatives are targeted based on the evidence and evaluated for their impact and future plans for improving the evaluation of your initiatives**

The consultation paper details only two BSB initiatives, although only one of them can be accurately described as a “diversity initiative”. As you are aware this has been the subject of previous correspondence which I do not propose to re-visit in this response.

The Recruitment Toolkit is an initiative to provide the Bar with a good practice guide on fair and objective selection and training in this. The project originated in response to the Neuberger Entry to the Bar report which called for all barristers to be trained in fair recruitment practices. While this recommendation was being considered, the Diversity Working Group (the forerunner of the BSB’s Equality and Diversity Committee) decided to commission a Recruitment Toolkit for the Bar. The purpose of this was to provide a good practice guide to chambers and develop a pilot course in fair recruitment for chambers. Monitoring of the proposed Code of Conduct requirement (currently under consultation) that those involved in recruitment and selection receive fair recruitment training and that chambers use fair and objective criteria, will be undertaken through the BSB’s Chambers Monitoring Scheme detailed above. It is also anticipated that such fair recruitment training will attract CPD points.

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<sup>2</sup> Paragraph 154 p.40

Should you have any questions on any part of this letter or the BSB response to the consultation, the BSB Equality and Diversity team would be happy to discuss them further. Kindly contact Sarah Loutfi [SLoutfi@BarStandardsBoard.org.uk](mailto:SLoutfi@BarStandardsBoard.org.uk) / 0207 611 1383 to arrange a follow up meeting.

Yours ever  
Vanessa

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