
Increasing diversity and social mobility in the legal workforce: transparency and evidence



Society of **Black Lawyers**
the pursuit of equality in justice

Response to the Legal Services Board's consultation paper on proposals

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Email: info@blacklawyer.org

Web: www.blacklawyer.org

Context

1. The Society of Black Lawyers (SBL) is the oldest organisation of African, Asian and Caribbean lawyers, jurists, legal executives and law students in the United Kingdom. Founded in 1969¹ by Sigbhat Kadri QC and the late Rudy Narayan, the SBL is also a civil rights advocacy organisation which exists to:
 - Promote equality and diversity within the legal profession;
 - Act as a representative and strategic voice for ethnic minority lawyers, legal executives, law students and academics; and
 - Campaign to ensure access to justice and quality legal services for ethnic minority and disadvantaged communities.
2. We very much welcome the opportunity to comment on proposals put forward by the Legal Services Board (LSB) to increase diversity and social mobility in the legal profession. The significance of these proposals are very clear to us and we anticipate that some aspects will be met with resistance as we have been here before². We nevertheless commend the LSB for returning to this issue and initiating this important debate.

¹ As the Afro-Asian and Caribbean Lawyers Association. The organisation was renamed the Society of Black Lawyers in 1972.

² In March 1995, a Law Society working party set up to tackle discrimination within the profession turned down a proposal from the society's equal opportunities committee for ethnic monitoring of all law firms. The working party, which was chaired by the society's then vice president, John Young, was established after research by the Policy Studies Institute in 1994 found there was a 'clear bias' against black students in selecting trainees. A draft final report by the working party included the suggestion of compulsory ethnic monitoring of solicitors' employees, but the proposal was scrapped when the recommendations were finalised. The SBL was highly critical of the decision to abandon this recommendation ('Race monitoring divides lawyers', The Guardian Newspaper, 8 March 1995).

3. When the SBL was first established, the then chairman of the Bar Council described the move as 'divisive, unhelpful, and contrary to the traditions of the Bar'. He went on to compare the formation of the organisation to a form of 'legal Apartheid'. The irony of his comments was that prior to 1973, only UK citizens could become solicitors, and therefore, by excluding ethnic minorities on the basis of this citizenship test, the legal profession had itself been operating a form of apartheid for hundreds of years.
4. It was the SBL's proactive lobbying for change that led to a number of major shifts in the equality and diversity landscape within the legal profession. These included:
 - Providing the impetus for the establishment of the Bar Council's Race Relations Committee (now the Equality and Diversity Committee) in 1984;
 - Organising a joint Minority Access Conference with Law Society in April 1986. As a direct result of this conference, the Law Society established its Equal Opportunities Committee (now the Diversity Committee);
 - Successfully making submissions to the Attorney General in 1989 that a loophole existed in the Race Relations Act (1976) concerning discrimination in the instruction of black and Asian barristers by solicitors. Subsequent lobbying by the SBL led to the inclusion of a provision in the Courts and Legal Services Act (1990) to redress this significant omission;
 - The creation of the Bar Council's first equality officer post and the Law Society's ethnic minority students' officer post;
 - Persuading both the Bar Council and the Law Society to introduce (non-binding) targets to tackle discrimination – firms and chambers were to aim to recruit at least 10 per cent of their lawyers from ethnic minority communities³;
 - Successfully supporting the legal campaign of black, Asian and ethnic minority students⁴ in their battle against the Council of Legal Education, Inns of Court School of Law (ICSL) for alleged racial discrimination in the marking of the Bar Vocational Course (BVC) examinations. The SBL was able to expose the

³ These targets were introduced in 1993.

⁴ The Ad Hoc Group of Bar Vocational Students.

disparities in both the admission and pass rates of ethnic minority students as well as highlight the lack of access to legal education and training faced by all students seeking to enter the profession. The SBL's campaign led to the creation of a committee of inquiry into equal opportunities at the Inns of Court School of Law (ICSL), which was chaired by Dame Jocelyn Barrow. The SBL was successful in challenging the monopoly which the ICSL had over the provision of vocational training for the Bar when the final report of the inquiry recommended that the ICSL should no longer be the sole institution in this area⁵. October 1997 marked the first year in which the BVC was offered by some seven institutions around the country;

- The introduction of ethnic monitoring; and
- Persuading the Crown Prosecution Service (CPS) to make equality and diversity data from chambers an essential requirement if barristers within those chambers wanted to be instructed by them.

5. The SBL was instrumental in getting the Law Society to pass its very first practice rule against discrimination. We also lobbied for and successfully secured a dedicated ethnic minority seat on the Law Society's ruling council. We would therefore argue that the foundations for achieving equality and diversity within the legal profession were laid by the early SBL pioneers, who introduced the concept of setting ethnic minority recruitment targets for example, long before they were recommended in the MacPherson Report⁶, and certainly before targets had been recommended or accepted by any other profession or trade union.
6. Our work to widen access to the legal profession and improve its diversity profile spans more than 40 years and pre-dates the Benson Commission on Legal Services⁷ by at least 10 years. What therefore exists by way of diversity initiatives and actions today, is firmly rooted in the efforts of those who took up the challenge of addressing racism and inequality within the legal profession so many years ago. Whilst we recognise that the profession has made significant progress, we also believe that much more must be done if ethnic minority lawyers and those who aspire to enter

⁵ Equal opportunities at the Inns of Court School of Law: Final Report (April 1994), J. Barrow, J. Larbie, R. Loomba

⁶ The Stephen Lawrence Inquiry: Report of an inquiry by Sir William MacPherson of Cluny (1999), CM 4262-I

⁷ The Royal Commission on Legal Services, Final Report (1979), Cmnd 7648

the legal profession are to experience true equality of opportunity in their working lifetime.

7. The context for these submissions has therefore been defined by our experiences as ethnic minority lawyers and as representatives of those who aspire to be lawyers. It is also shaped by over 40 years of campaigning and advocacy on these issues, punctuated by significant achievements and major steps forward. The LSB has stated that its proposals do not currently include the introduction of a 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. It has also suggested that it is minded to reject any proposals to set targets for the profession as a whole or for individual firms or chambers.
8. We would urge the LSB to be both bold and more informed about what will be required in order to achieve long-term systemic change within the legal profession. The fact still remains that almost 20 years after the introduction of voluntary recruitment targets, the pace of change within the profession has been slow and in some areas, the change has been negligible. The LSB should neither retreat from the gains that have been made, nor simply settle for them. Its proposals should both build upon and radically advance on these achievements, which in our view, set the minimum standard. If the principle of advancement, in terms of setting a new agenda for diversity and inclusion in the legal profession is accepted, we would argue that setting mandatory targets cannot be so easily discounted by the LSB at this stage.
9. For those of us who have been involved in the struggle for equality and access, timescales are an important factor. Whatever actions the LSB proposes to take in order to increase diversity and social mobility at every level of the profession, the timescales for moving from the genteel approach of 'voluntary' to what the SBL would like to see, which is a more robust regulatory and mandatory environment, must be clearly defined. Ethnic minority lawyers and students should not have to wait another 40 years (or more) in order to secure lasting systemic change.

Existing data

10. We welcome the LSB's proposals to include the collection of monitoring data on paralegals and legal secretaries within firms and chambers, since the size and composition of the paralegal workforce in particular, will reveal a great deal of information and intelligence about the final destinations of ethnic minority graduates who have passed the Legal Practice Course (LPC) or the Bar Professional Training Course (BPTC) but have been unable to secure the training contracts and pupillages necessary to convert these expensive qualifications into membership of the profession. We would recommend that outdoor legal clerks are also mentioned specifically and included in the diversity reporting requirement.

11. We note that there is an absence of data on the diversity profile of barristers' clerks and practice managers at the Bar. We believe that the central and powerful role played by barristers' clerks within chambers is such that this group should be specifically mentioned within the LSB's proposals. Barristers' clerks can make or break legal careers and our experience suggests that it is an almost exclusively white and male dominated area of the legal workforce. The Institute of Barristers' Clerks (IBC)⁸ represents the interests of its members on a number of Bar Council committees, such as the:
 - Joint Liaison Committee of the Bar Council and the IBC
 - Professional Standards Committee
 - Bar Direct
 - Remuneration & Terms of Work

12. The IBC has stated that as at May 2000, 26 per cent of its members were female. We do not know whether the IBC holds any monitoring data on the age, sexual orientation, disability, race/ethnicity, religion or belief of its members, but our view is that this is unlikely.

13. We are also of the view that the approved regulators should practise what they preach by collecting and publishing diversity data on their own staff, together with the level of engagement and participation of those with equality characteristics on committees or elected/appointed positions. We have yet to have an ethnic minority

⁸ <http://www.ibc.org.uk/>

President of the Law Society or indeed an ethnic minority Chair (or Vice Chair) of the Bar Council.

14. Although they are not approved regulators, we would like the LSB to consider how the four Inns of Court⁹ could be included in the drive for greater transparency and openness. The Inns are the professional associations to one of which every barrister in England and Wales must belong. Most importantly, they have a special and historic status within the profession, which includes, for example, the authority to call members to the Bar and therefore confer on them rights of audience in the High Court.
15. We believe that whilst the LSB's assessment of what the current and available diversity data tells us is fair, it is also in danger of being too simplistic. Although the data may, for example, show that 28 per cent of newly qualified solicitors in 2008/09 were from black, Asian and ethnic minority (BAME) communities, we believe that if this data were interrogated further, disparities *between* ethnic groups becomes more apparent.
16. For example, Law Society statistics that break down the number of BAME City lawyers into ethnic groups has revealed a relative over-representation of lawyers from Asian and Chinese backgrounds (who make up 4.4 per cent and 1.2 per cent respectively of all City lawyers, relative to 4 per cent and 0.4 per cent of the general population) and an under-representation of black (African and/or Caribbean) lawyers (who make up 1.2 per cent of all City lawyers, relative to 2 per cent of the general population).
17. Statistics produced by the Bar Standards Board for the year 2007/08 show that although students from Pakistani and Bangladeshi origin made up 3.5 per cent and 2.7 per cent respectively, of students on the Bar Vocation Course (BVC)¹⁰, they only made up 1.2 per cent and 1.1 per cent respectively of those securing pupillage. Black Caribbean and Chinese students fared much worse, making up 7 per cent and 13.1 per cent of BVC students, but only comprising 0.4 per cent and 2.3 per cent of those securing pupillage.

⁹ The Honourable Society of Lincoln's Inn; The Honourable Society of Inner Temple; The Honourable Society of Gray's Inn; and The Honourable Society of Middle Temple.

¹⁰ The predecessor of the Bar Professional Training Course (BPTC).

18. We would also be keen to understand what the landscape looks like for those who occupy multiple equality characteristics, such as ethnic minority women and those who occupy those spaces, which intersect with race, gender, sexual orientation and religion or belief. It will be necessary for the LSB to understand these complexities in order to ensure that transparency is accompanied by depth. Whilst the data may tell us that 60 per cent of newly qualified solicitors in 2008/09 were women, what does the data tell us about the experiences of ethnic minority women? Or indeed the differences between women of Indian, African or Pakistani origin? Our experience suggests that the real beneficiaries of equality and diversity measures within the legal profession have to date been white women.

The legal profession as distinct from other professions

19. Whilst comparisons with other professions may be helpful, we would argue that the history of the legal profession in UK (and in England in particular) distinguishes it from all others. As one of the oldest professions in the world, the education, training and practice of lawyers is deeply rooted in the corridors of power, politics and privilege. The enduring relationship between the public schools of Eton and Harrow, the universities of Oxford and Cambridge and the four Inns of Court cannot be ignored. It was, after all, the privy council of Charles I, which described the Inns as *“Seminaries and Nurseries wherein the Gentry of the Kingdome and such as serve his Majesty in the Common Wealth are bredd and trained upp....”*¹¹

LSB priorities

20. We are broadly in agreement with the priorities identified for 2011. We would however add “ensuring compliance with existing law” as a fourth priority. We support the LSB’s move to embed transparency as a regulatory requirement, as well as the need to develop a more robust evidence base and picture of the diversity profile of the legal workforce. Again, we would reiterate the need to ensure that the evidence base includes data on those who occupy more than one equality characteristic.
21. The LSB’s proposals assume that transparency provides a sufficient incentive for regulated entities to embrace, promote and practice diversity. In our experience,

¹¹ A Relation of a Short Survey of the Western Counties Made.....in 1635, ed. L.S. Wickham Legg (Camden Soc., Miscellany xvi, 1936), p. 96. A[acts of the] P[rivy] C[ouncil], 1629-1630, ed. J. R. Dasent (new series, London, 1890-), p.145.

there must be rewards for good practice and performance, not just the publishing of data. There must also be clear sanctions for failing to publish or failing to change. It is our view that transparency alone will not work for the vast majority of firms or chambers for whom profit and profitability is the main driving force which denotes success and where diversity (or the lack thereof) by comparison, is only of marginal importance and may not embarrass any chambers or firms that are financially successful and viable. The LSB will therefore need something more, either the reward of business which leads to increased profitability or sanctions which affect profitability, since it is profitability above all else that is the main driver for firms' and chambers' success.

22. The LSB has stated that it does not envisage placing an obligation on approved regulators to rank the performance of individual firms or chambers based on the data published. We believe that as an integral part of their standard setting roles, the regulators have a duty to assess the published data and draw conclusions from them. Furthermore, rather than leave this work to be undertaken by interest groups that may not have the required resources or be able to approach such an undertaking with the necessary rigour, we believe that appropriate provision (and funding) should be made for the independent analysis of the data and its implications. The role of special interest groups would be to use the data and the analysis to lobby for change.

Evaluating the effectiveness and impact of existing initiatives

23. We believe that diversity initiatives, aimed at improving access to and participation in the profession have had a positive impact, but the successes are often small scale and localised. We agree that a systematic approach to evaluating the impact and effectiveness of diversity initiatives is therefore essential.
24. We would recommend that the LSB and the regulators work with interest groups such as SBL to develop an 'Equality Framework for the Regulated Entities', which will operate as a performance improvement and benchmarking tool. A structure for evaluating diversity initiatives should be developed as part of this overarching equality framework.

Specific regulatory requirements and targets

25. For the reasons already outlined previously in this submission, we believe that the LSB's position of not proposing the introduction of regulatory requirements on entities to take specific action to improve performance (including targets) should be re-considered.
26. We agree that statutory guidance to approved regulators about diversity data collection and transparency should be issued and where practicable, standard data categories should be agreed with the approved regulators in order to ensure comparability of diversity data within both the legal workforce and other external datasets.

Impact on firms

27. There will be some stakeholders who will regard the LSB's proposals as a disproportionate regulatory burden. We do not. The legal profession is very familiar with the need to complete all sorts of forms and questionnaires as an integral part of their day-to-day business. The LSB has already stated that its objective is to embed transparency as a regulatory requirement. Those who are regulated, seldom welcome the introduction of rules that challenge their 'comfort zones'. The LSB should not be swayed by such arguments.
28. We do not agree that small firms should collect data every three years. All regulated entities are required to submit annual returns to various regulators, be it Companies House, the Legal Services Commission or indeed the approved regulators. Our view is that the LSB's principle of embedding and mainstreaming transparency and diversity monitoring will not be achieved if the activity is not undertaken annually, with no exceptions.
29. We agree with the LSB's proposal that data should be collected about all the relevant protected characteristics for the purposes of the public sector equality duty¹² under the 2010 Act, plus social-economic background. We also believe that the data should be collected anonymously. Not only will anonymity increase questionnaire response rates, but also reinforce the point that we are interested in establishing a comprehensive picture of the legal workforce, as opposed to individuals. If there is a

¹² S.149 of the Equality Act 2010

way of integrating the data collection with the practising certificate, then this should be explored further. However, the practising certificate route will not be applicable to the wider legal workforce.

Model questionnaire

30. We would suggest the following amendments to improve the model questionnaire:

(a) We believe that the way in which the questions flow is important. In relation to the status of the respondent, we would recommend that the questions flow as follows:

1. Are you an authorised person for the purposes of the Legal Services Act 2007 (i.e. you hold a practising certificate issued by one of the approved regulators)?

Yes	<input type="checkbox"/>	<i>Please proceed to question 1a</i>
No	<input type="checkbox"/>	<i>Please proceed to question 1b</i>

1a Please indicate your status:

Barrister	<input type="checkbox"/>
Solicitor	<input type="checkbox"/>
Legal Executive (Fellow)	<input type="checkbox"/>
Licensed Conveyancer	<input type="checkbox"/>
Patent Attorney	<input type="checkbox"/>
Trade Mark Attorney	<input type="checkbox"/>
Cost Lawyer	<input type="checkbox"/>
Notary	<input type="checkbox"/>
Prefer not to say*	<input type="checkbox"/>

**We do not think that respondents should be given the option of not answering this question. It should be mandatory.*

1b Please indicate whether you fulfil:

A fee earning role not listed in 1a
 A role directly supporting a fee earner

<input type="checkbox"/>	<i>Please specify:</i>
<input type="checkbox"/>	<i>Please specify:</i>
<input type="checkbox"/>	Administrator <input type="checkbox"/>
<input type="checkbox"/>	Barristers' Clerk <input type="checkbox"/>
<input type="checkbox"/>	Legal assistant <input type="checkbox"/>
<input type="checkbox"/>	Legal secretary <input type="checkbox"/>
<input type="checkbox"/>	Outdoor legal clerk <input type="checkbox"/>
<input type="checkbox"/>	Paralegal <input type="checkbox"/>

A managerial role	<input type="checkbox"/> Practice manager <input type="checkbox"/> <i>Please specify:</i> <i>Chief executive</i> <input type="checkbox"/> <i>Director (non-lawyer)</i> <input type="checkbox"/> <i>Partner (non-lawyer)</i> <input type="checkbox"/> <i>Practice Director</i> <input type="checkbox"/> <i>Other</i> <input type="checkbox"/> _____
An IT, HR or other corporate services role	<i>Please specify:</i> <i>CSR</i> <input type="checkbox"/> <i>Graduate recruitment</i> <input type="checkbox"/> <i>Human resources</i> <input type="checkbox"/> <i>IT</i> <input type="checkbox"/> <i>Marketing</i> <input type="checkbox"/> <i>Other</i> <input type="checkbox"/> _____
Prefer not to say*	

31. We feel that it is important that the questionnaire makes provision for the respondents to clearly indicate both the type of role or function they play within the regulated entity and also the job title. This level of detail is essential.
32. As a general rule, where the question does not relate to any of the equality characteristics, we do not think that respondents should be given the option to 'prefer not to say'. We therefore believe that questions relating to status and job role should be mandatory.
33. We would support the inclusion of categories or fields that would enable more sophisticated analysis to be conducted and therefore allow us to identify where the key challenges or blockages exist. Size and type of firm, practice area, country of first qualification and nationality represent the sort of data that we would like to see collected. We support the LSB's proposed approach to collecting data on disability, sexual identity and religion/ belief.
34. In relation to socio-economic background, we would wish to see more specific questions around the type of university attended. Given the strong link between Oxbridge and/or Russell Group universities and major city law firms, we feel that it is important to include a question as part of the data to be collected.
35. We are firmly of the view that the approved regulators should commit the resources necessary to implement an effective data collection framework. Clear and realistic timescales should be set for implementation.

For further information about this consultation response, please contact:

**Rosemary Emodi
Vice Chair
Society of Black Lawyers
Email: info@blacklawyer.org**