



## **The Lesbian & Gay Foundation's response to:**

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

**Consultation paper on proposals to increase diversity and  
social mobility in the legal workforce**

**March 2011**

The Lesbian & Gay Foundation – Response:

Increasing diversity and social mobility in the legal workforce: transparency and evidence  
Consultation paper on proposals to increase diversity and social mobility in the legal workforce

# Contents

- **About The Lesbian & Gay Foundation**
- **Key Response Points for consideration to each question as outlined**
- **Further reading and information to support our response**
- **Contact details**

## About The Lesbian & Gay Foundation

**The Lesbian and Gay Foundation is based in central Manchester, and supports over 40,000 lesbian, gay and bisexual (LGB) people each year. In addition to a wide range of health and advocacy services, we also undertake research, information provision and policy campaigning on a national scale. As a result, we provide more direct services and resources to more LGB people than any other organisation of our kind in the UK.**

The Lesbian & Gay Foundation (LGF) is a vibrant charity with a wide portfolio of well-established services and a rapidly developing range of new initiatives aimed at meeting the needs of lesbian, gay and bisexual people. The LGF is committed to working with partners across all sectors in order to achieve more positive outcomes for lesbian, gay and bisexual people. The LGF is reported by service users as to be one of the first points of contact for them when they have been at a crisis point in their lives. We campaign for a fair and equal society where all lesbian, gay and bisexual people can achieve their full potential, and our mission is: 'Ending Homophobia, Empowering People'.

## Key Response Points for Consideration

### 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 Lesbian & Gay Foundation believes that sexual orientation monitoring should become commonplace and be included in the Law Society's REGIS database. We believe that this should also be implemented in the basic monitoring data collected by the Bar Council in order to standardise the information available.

The Equality and Human Rights Commission advises in *Beyond tolerance: Making sexual orientation a public matter* (2009) that "the same principles should apply to the collection and use of information on sexual orientation, as they do to other characteristics such as gender, race and disability". It acknowledges that monitoring sexual orientation is the exception rather than the rule, but states that employers should monitor sexual orientation in recruitment, retention and development processes as well as for existing staff. Employers need to explain to employees why the data is being collected, ensure confidentiality, and take a proactive approach on bullying and harassment.

There are currently no established datasets around sexual orientation available for legal services to our knowledge.

It is important to note that Simmons and Simmons feature in the Stonewall Workplace Equality Index at number 19 out of the UK's top 100 employers for lesbian, gay and bisexual staff, with Pinsent Masons at number 30 and several more included in the list:

[http://www.stonewall.org.uk/at\\_work/4763.asp](http://www.stonewall.org.uk/at_work/4763.asp).

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

The Lesbian & Gay Foundation believes that the analysis of data available around sexual orientation is currently inadequate and from the data sets highlighted under the 'existing data' section indicates that further analysis around sexual orientation is required.

The Lesbian & Gay Foundation – Response:

Increasing diversity and social mobility in the legal workforce: transparency and evidence  
Consultation paper on proposals to increase diversity and social mobility in the legal workforce

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

There is no tested and reliable national dataset around sexual orientation that is currently available. The only research estimates around sexual orientation that are currently available are based on the Office for National Statistics Integrated Household Survey 2010. However this was an experimental data test and therefore all estimates provided are experimental. Experimental statistics are new official statistics undergoing evaluation.

For more information from this study, refer to the report:

<http://www.statistics.gov.uk/articles/nojournal/measuring-sexual-identity-report.pdf>

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

As highlighted in the response to Question 1; some law organisations feature in the Stonewall Workplace Equality Index.

**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 2010 Act obligations and the Better Regulation principles)?**

The Lesbian & Gay Foundation believes that all protected characteristics should be highlighted (including sexual orientation) within the immediate priorities and not be reduced to gender and ethnicity. The protected characteristics should all be approached in line with the Equality Act 2010, not singling out specific characteristics.

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

The Lesbian & Gay Foundation believes that the paucity of data around sexual orientation in the legal profession should be addressed as a priority and not ignored because data is not currently available or little data is available.

The Lesbian & Gay Foundation – Response:

Increasing diversity and social mobility in the legal workforce: transparency and evidence  
Consultation paper on proposals to increase diversity and social mobility in the legal workforce

**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?**

The Lesbian & Gay Foundation believes that approved regulators should impose regulatory requirements on the entities they regulate and publish data about the diversity make-up of their workforce.

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

The Lesbian & Gay Foundation has no response to this 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?**

All legal services organisations should monitor the sexual orientation of staff and service users.

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

The Lesbian & Gay Foundation has no response to this 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?**

The Lesbian & Gay Foundation would recommend that whilst external datasets provide a comparison for data collected, datasets such as the census currently exclude sexual orientation monitoring and therefore the data collected should follow that as outlined as the protected characteristics in the Equality Act 2010.

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

The Lesbian & Gay Foundation doesn't believe that anyone should be excluded from data collection regardless of role or function.

The Lesbian & Gay Foundation – Response:

Increasing diversity and social mobility in the legal workforce: transparency and evidence  
Consultation paper on proposals to increase diversity and social mobility in the legal workforce

- March 2011 - Page 5 of 13

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

Yes; The Lesbian & Gay Foundation doesn't believe that anyone should be excluded from data collection. Implementing equality monitoring should be done fairly and equally and across all of its functions and roles.

If there is specific, legitimate reasoning for an organisation, function or role to be excluded or exempt from monitoring, then this should be made explicit.

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

The Lesbian & Gay Foundation has no response to this 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 Lesbian & Gay Foundation has no response to this 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?**

The Lesbian & Gay Foundation fully supports the collection of all data and doesn't believe that the exclusion of any protected characteristic can be justified.

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

A Frequently Asked Questions section on sexual orientation legislation in the Local Government Employers website suggests that where there is known to be "high concentrations of lesbians and gay men" locally, monitoring job applications may help councils ensure that they are attracting a representative range of candidates, but it remains for "each employer to determine when or if monitoring would be beneficial." It goes on to highlight that anonymous staff attitude surveys are recommended to determine whether staff are experiencing disadvantage or harassment based on their sexual orientation; therefore as this is a relatively new area for Legal Services, it would be advisable to utilise anonymous data collection to introduce the practice.

The Lesbian & Gay Foundation – Response:

**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?**

As highlighted in paragraph 117, individuals may be less willing to disclose what is deemed to be more personal information if it is not anonymous; which may result in more 'prefer not to say' responses.

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

In the model questionnaire, The Lesbian & Gay Foundation that individuals are provided with a separate opportunity to identify lesbian and gay and that these should not be grouped together.

Also, as with the gender identity question, if an individual indicates 'other' under this question, there should be an opportunity to define what they mean by other and how indeed they define their sexual orientation.

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

The Lesbian & Gay Foundation has no response to this 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?**

The Lesbian & Gay Foundation has no response to this question.

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

The Lesbian & Gay Foundation has no response to this question.

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

The Lesbian & Gay Foundation has no response to this question.

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

The Lesbian & Gay Foundation has no response to this question.

The Lesbian & Gay Foundation – Response:

Increasing diversity and social mobility in the legal workforce: transparency and evidence  
Consultation paper on proposals to increase diversity and social mobility in the legal workforce



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

The Lesbian & Gay Foundation fully supports and recognises the importance of separating out the question on gender identity and sexual orientation and is pleased to see that this proposed approach to collecting data on sexual identity has been adopted. Using guidance from Stonewall and the ONS.

Through a case study undertaken by The Lesbian & Gay Foundation, in terms of asking the question, out of 14 organisations consulted, all organisations provide a tick box for the individual to complete and the question is generally along the lines of Stonewall's recommendations.

The main differences lie in whether "Gay/Lesbian" are offered as one option or separated into "Gay Man" and "Gay Woman/Lesbian", and whether an "Other" option is provided (three organisations included "Other"); which The Lesbian & Gay Foundation recommends.

Heterosexual was always given as "Heterosexual/Straight", and one organisation had had a complaint from a staff member that using the term "straight" suggested any other identity was therefore "bent"; it was acknowledged that terminology was chosen to reflect that used by other organisations, and that Stonewall used "straight" in their monitoring resource, *What's it got to do with you?* and this had also been addressed through research undertaken by the ONS.

In the majority of cases, no specific staff training around sexual orientation monitoring accompanied its introduction; often it was felt that the prior collection of data for other equality strands, and the Equality & Diversity training that all staff are required to complete at induction would be sufficient. However, a significant number of organisations that had taken this approach later identified a need for better staff training around sexual orientation monitoring in order to increase response rates.

All organisations had, however, implemented a communication strategy of some description alongside sexual orientation monitoring, aiming to explain why sexual orientation was being asked, how it was important to the organisation's work and assuring confidentiality. This ranged from a cover letter with the monitoring form to circulating a Frequently Asked Questions document or a guide for staff asking sexual orientation of service users. Most organisations recognised that good communication was key to successful monitoring.

The Lesbian & Gay Foundation – Response:

Several organisations connected what they felt to be successful monitoring practice to the fact that sexual orientation monitoring had not been introduced in isolation: either monitoring for other strands had been in place for a considerable time and so was a well-established practice; or the question was asked for the first time among other monitoring, and even under the guise that additional monitoring was being carried out to rectify incomplete staff records.

**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?**

The Lesbian & Gay Foundation has no response to this 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?**

Yes. The Lesbian & Gay Foundation believes that this question should be included.

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

Yes, The Lesbian & Gay Foundation believes that the terminology used in the questionnaire would be satisfactory based on the experience we have of asking this question.

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

We need to ensure that LGB relationships and caring responsibilities are viewed equally to heterosexual caring relationships. i.e. Same sex parenting should be treated fairly and equally as well as heterosexual relationships. Also, individuals in same sex relationships should be entitled to the same support around caring for sick partners/relatives or relatives with chronic or manageable illnesses.

The Lesbian & Gay Foundation – Response:

Increasing diversity and social mobility in the legal workforce: transparency and evidence  
Consultation paper on proposals to increase diversity and social mobility in the legal workforce

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

As the socio-economic duty has been removed as an area of focus of the Equality Act 2010; we would question why specific focus was placed on this, particularly if it was at the expense of targeted work around other equality strands.

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

Providing the information is publicly available (through websites and other resources as identified in paragraphs 165 – 169), we feel that the publication requirements are adequate.

**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?**

Although the Public Sector Equality Duty does indicate that government departments with less than 150 do not need to publish equality monitoring information under the Public Sector Equality Duty, The Lesbian & Gay Foundation strongly believes that all organisations should publish all data relating to the diversity of its staff, regardless of seniority.

Whilst the Equality Act 2011 relates directly to public bodies covered by the specific duties and the fact that they must publish sufficient information to show that they have considered the three aims of the general duty across their functions. We believe that other organisations should follow this rule as good practice.

As highlighted in the Equality Act 2010, the information published must include information on the effect that the organisations policies and practices have on equality for service users, and (for those with 150 or more staff) on equality for their employees.

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

As highlighted in paragraph 170 and 171; there will be an impact on organisational resources and organisations will need to consider staff training and support, together with providing information and guidance to support and encourage individuals to answer all questions.

**For further reading:**

**Breaking the Cycle; underpinning the development of the LGB&T Sector:**

<http://www.lgf.org.uk/assets/Uploads/PDFs/Resources/breaking-the-cycle-executive-summary.pdf>

**How to: Breaking the Cycle:**

An introductory document to support organisations implementing the strategy  
<http://www.lgf.org.uk/assets/Uploads/PDFs/Rainbow-Partnership/How-to-breaking-the-cycle.pdf>

**Breaking the Cycle Roadshow Report:**

To check the progress of Breaking the Cycle across the region the LGF held five events

in March 2010; one in each of the North West's sub-regions

<http://www.lgf.org.uk/assets/Uploads/PDFs/Rainbow-Partnership/breaking-the-cycle-roadshow-2010-report.pdf>

**Improving the regions knowledgebase on the LGB&T population in the North West:**

<http://www.nwda.co.uk/search-results.aspx?terms=lesbian,%20gay,%20bisexual%20&btnSubmit=Go&>

**The National LGB&T Partnership Manifesto:**

<http://www.lgf.org.uk/assets/Uploads/PDFs/Resources/national-lgbt-partnership-manifesto.pdf>

The Lesbian & Gay Foundation – Response:

Increasing diversity and social mobility in the legal workforce: transparency and evidence  
Consultation paper on proposals to increase diversity and social mobility in the legal workforce

**For more information:**

If you would like any further information with reference to the information and responses included in this consultation response, please contact:

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