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Mr Paul Greening  
Legal Services Board  
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9 March 2012

Dear Mr Greening

**Consultation on Equality Duty Objectives for 2012/13 issued by the Legal Services Board (the 'LSB') (the 'Consultation')**

On behalf of the Regulatory Committee (**Committee**) of the Tunbridge Wells, Tonbridge & District Law Society (**Society**) I present its response to the Consultation. The Committee is comprised of members all of whom have considerable expertise and professional experience in regulatory matters.

The Society represents Solicitors and other lawyers who practice or live in the counties of Kent and East Sussex. The law firms to which the Society's members belong advise a variety of clients from individuals to multi-national companies, from trustees to financial institutions in all manner of legal issues.

**1. Background**

- 1.1 On 4 March 2011 the Committee gave its response to a consultation " 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" issued by the LSB (**Initial Consultation**).
- 1.2 The LSB published its Single Equality Scheme 2010/11 in May 2010 following that Initial Consultation.
- 1.3 The Committee were heartened that the LSB had taken on board the evident feelings of the profession and had tempered a good many of the proposals to be a ground breaking force for social change. Setting the standard the legal profession was to have met higher than for other professions was likely to have been entirely counter-productive.
- 1.4 The Chairman's Foreword to the Consultation makes clear that he still favours a radical approach to imposing the will of the LSB on the profession. The Committee would prefer to see evidence of a more collaborative approach by the LSB and its Chairman.

- 1.5 Single Equality Scheme 2010/11 set out four objectives to be delivered by the LSB:
- 1.5.1 to encourage a more diverse workforce across the legal sector at all levels;
  - 1.5.2 to promote and encourage the approved regulators to promote equality and diversity among the legal sector the LSB regulates;
  - 1.5.3 to make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible;
  - 1.5.4 to ensure that the LSB's own practices and policies, in relation to staff and stakeholder communication and ensuring a consistent focus on equalities through our entire work programme, and are an example of the practice the LSB promotes to others.
- 1.6 In June 2011, the LSB Consumer Panel published a Consumer Impact Report. In that it assessed the diversity of the legal workforce and the extent to which providers of legal services understand the diverse needs of consumers. We understand that such a report is to be published annually.
2. **The Consultation**
- 2.1 The Consultation has been issued by the LSB in conjunction with its Equality Report for 2010/11.
- 2.2 The LSB has requested views on the proposed objectives. It is particularly interested as to whether the scope of the LSB's objectives, as expressed in the Consultation, adequately reflects the LSB's role and its work programme for 2012/13.
3. **Proposed objectives**
- 3.1 Section 3 of the Consultation sets out the proposed objectives as follows:
- 3.1.1 *"Encourage the approved regulators to promote equality and diversity including developing a diverse workforce across the legal sector at all levels by:*
    - (a) *Assessing approved regulators' implementation plans to gather and evaluate diversity data.*
    - (b) *Reviewing the progress made by approved regulators in delivering their implementation plans.*
    - (c) *Continuing to engage with approved regulators on how best to enhance a more diverse workforce across the legal sector.*
  - 3.1.2 *Make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible by:*

- (a) *Factoring equalities and diversity into our research. Undertaking Equality Impact Assessment Screening (now called Equality Analysis) where appropriate when developing our programme and policies for consultation.*
- (b) *Reviewing and developing the consumer toolkit that helps LSB staff identify and analyse consumer groups and their needs.*
- (c) *Engaging with diversity groups and organisations.*
- (d) *Continuing to encourage the Consumer Panel to develop a wide range of contacts and to incorporate diversity and equality into its consideration of consumer issues.*

3.1.3 *To ensure that the LSB's own practices and policies, in relation to staff/stakeholder communication and focus on equalities through our entire work programme, are examples of the approach we promote to others. We will do this by:*

- (a) *Ensuring that our publications are available in all formats on request. Monitoring and publishing the diversity of our staff.*
- (b) *When tendering for services, we will work with firms who can demonstrate that they have a commitment to equality and diversity.*
- (c) *Applying recruitment processes that are in line with our Equality Duty."*

#### 4. **The Committee's responses**

4.1 Taking each of the objectives in turn the Committee has the following observations and recommendations.

4.2 Objective: Encourage the approved regulators to promote equality and diversity including developing a diverse workforce across the legal sector at all levels by assessing approved regulators' implementation plans to gather and evaluate diversity data.

##### 4.2.1 Clarity of Objective?

The Committee was in the majority in making representations concerning the manner in which the aspiration of a more diverse profession is expressed. The Committee does not agree that the LSB has the power or the moral authority to compel regulators to compel regulated entities to **promote** equality and diversity. It is for this reason that Principle 9 of the SRA Code of Conduct states that

"You must run your business or carry out your role in the business in a way that **encourages** equality of opportunity and respect for diversity".

##### 4.2.2 Does the Committee agree with the Objective?

The Committee is of the view that the Objective should be framed as follows:

Engage with the approved regulators to encourage equality and diversity including developing a diverse workforce across the legal sector by assessing approved regulators' implementation plans to gather and evaluate diversity data.

4.2.3 Is the Objective achievable in the timeframe?

The Committee believes it is.

4.2.4 Is attainment of the Objective measurable?

The Committee believes the LSB needs to be specific on this point.

4.3 Objective: Encourage the approved regulators to promote equality and diversity including developing a diverse workforce across the legal sector at all levels by reviewing the progress made by approved regulators in delivering their implementation plans.

4.3.1 Clarity of Objective?

The Committee is at a loss to understand what the words "at all levels" add to this and the other related Objectives.

4.3.2 Does the Committee agree with the Objective?

(a) So long as the review is not intrusive or expensive, the Committee does not see this as an objectionable Objective.

(b) The Committee is of the view that the Objective should be framed as follows:

Engage with the approved regulators to encourage equality and diversity including developing a diverse workforce across the legal sector by reviewing the progress made by approved regulators in delivering their implementation plans.

4.3.3 Is the Objective achievable in the timeframe?

The Committee believes it is.

4.3.1 Is attainment of the Objective measurable?

The Committee believes it is.

4.4 Objective: Encourage the approved regulators to promote equality and diversity including developing a diverse workforce across the legal sector at all levels by continuing to engage with approved regulators on how best to enhance a more diverse workforce across the legal sector.

4.4.1 Clarity of Objective?

Subject to redrafting, the intent of the Objective seems satisfactory to the Committee.

4.4.2 Does the Committee agree with the Objective?

The Committee is of the view that the Objective should be framed as follows:

Engage with the approved regulators to encourage equality and diversity including developing a diverse workforce across the legal sector by discussing how best to enhance a more diverse workforce across the legal sector with approved regulators.

4.4.3 Is the Objective achievable in the timeframe?

The Committee believes that discussions can be held at any time.

4.4.4 Is attainment of the Objective measurable?

The Committee believes it is.

4.5 Objective: Make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible by factoring equalities and diversity into the LSB's research.

4.5.1 Clarity of Objective?

- (a) The Committee does not understand why there is a specific reference to "relevant consumer and interest groups". It is unclear to which groups the LSB will turn.
- (b) Surely all groups making relevant representations ought to be heard?
- (c) This appears to repeat the proposed draft Objective to "Make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible by engaging with diversity groups and organisations", on which, see the Committee's comments below at paragraph 4.8.
- (d) It cannot be the case that all decisions of the LSB will be based on information that takes equality into account. It may be a factor, but will not necessarily be the basis of the information which is critical to a decision in all instances.

4.5.2 Does the Committee agree with the Objective?

- (a) The Committee is of the view that a requirement to factor issues of equality and diversity into all the LSB's research is not what was intended, perhaps.
- (b) The Committee suggests the Objective should be framed as follows:

Make decisions which take account of any information relevant to issues of equality or diversity by factoring equalities and diversity into the LSB's research.

- 4.5.3 Is the Objective achievable in the timeframe?  
The Committee has seen no evidence on this point.
- 4.5.4 Is attainment of the Objective measurable?  
The Committee believes the LSB needs to be specific on this point.
- 4.6 Objective: Make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible by undertaking Equality Impact Assessment Screening (now called Equality Analysis) where appropriate when developing our programme and policies for consultation.
- 4.6.1 Clarity of Objective?  
Subject to redrafting, the intent of the Objective seems satisfactory to the Committee.
- 4.6.2 Does the Committee agree with the Objective?  
The Committee is of the view that the Objective should be framed as follows:  
Make decisions which take account of any information relevant to issues of equality or diversity by undertaking Equality Impact Assessment Screening (now called Equality Analysis) where appropriate when developing our programme and policies for consultation.
- 4.6.3 Is the Objective achievable in the timeframe?  
The Committee has seen no evidence on this point.
- 4.6.4 Is attainment of the Objective measurable?  
The Committee believes it is.
- 4.7 Objective: Make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible by reviewing and developing the consumer toolkit that helps LSB staff identify and analyse consumer groups and their needs.
- 4.7.1 Clarity of Objective?  
Subject to redrafting, the intent of the Objective seems satisfactory to the Committee.
- 4.7.2 Does the Committee agree with the Objective?

The Committee is of the view that the Objective should be framed as follows:

Make decisions which take account of any information relevant to issues of equality or diversity by reviewing and developing the consumer toolkit that helps LSB staff identify and analyse consumer groups and their needs.

4.7.3 Is the Objective achievable in the timeframe?

The Committee has seen no evidence on this point.

4.7.4 Is attainment of the Objective measurable?

The Committee believes the LSB needs to be specific on this point, as there are no key performance indicators specified.

4.8 Objective: Make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible by engaging with diversity groups and organisations.

4.8.1 Clarity of Objective?

The Committee considers the Objective unnecessary and is simple tautology when seen as a sentence, as above.

4.8.2 Does the Committee agree with the Objective?

The Committee sees no point in this Objective and suggests it is deleted in its entirety.

4.8.3 Is the Objective achievable in the timeframe?

This is an irrelevant Objective.

4.8.4 Is attainment of the Objective measurable?

The Committee believes the Objective is unnecessary.

4.9 Objective: Make decisions based on information that takes equality into account including input from relevant consumer and interest groups where possible by continuing to encourage the Consumer Panel to develop a wide range of contacts and to incorporate diversity and equality into its consideration of consumer issues.

4.9.1 Clarity of Objective?

(a) The Committee believes there are some issues with the use of words which can be interpreted in any number of ways. Some of them may be expensive for the LSB, or rather the profession that funds the activities of the regulators' regulator.



- (b) The Committee could foresee fact finding trips hither and thither by a liberal interpretation of the phrase "... to encourage the Consumer Panel to develop a wide range of contacts ...".

4.9.2 Does the Committee agree with the Objective?

The Committee is of the view that the Objective should be framed as follows:

Make decisions which take account of any information relevant to issues of equality or diversity by requesting the Consumer Panel to incorporate diversity and equality into its consideration of consumer issues.

4.9.3 Is the Objective achievable in the timeframe?

There appears to be no reason why the Objective would not be achievable in the timeframe.

4.9.4 Is attainment of the Objective measurable?

The Committee believes the LSB needs to be specific on this point.

4.10 Objective: To ensure that the LSB's own practices and policies, in relation to staff/stakeholder communication and focus on equalities through our entire work programme, are examples of the approach we promote to others. We will do this by ensuring that our publications are available in all formats on request.

4.10.1 Clarity of Objective?

The Committee considers the Objective is detrimentally affected by 'management speak' which is quite unclear to the man on the Clapham omnibus.

4.10.2 Does the Committee agree with the Objective?

- (a) The Committee concurs with the general idea of having publications available in all formats that are appropriate and economically viable for a regulator's regulator on request.
- (b) The LSB should not attempt to become consumer focused. It is not its role.
- (c) The Committee is of the view that the Objective should be framed as follows:

To ensure that the LSB's own practices and policies, in relation to all communications and ethos are examples of the approach we promote to others. We will do this by ensuring that our publications are available in all formats that are appropriate and economically viable for a regulator's regulator on request



4.10.3 Is the Objective achievable in the timeframe?

There appears to be no reason why the Objective would not be achievable in the timeframe.

4.10.4 Is attainment of the Objective measurable?

The Committee believes it is.

4.11 Objective: To ensure that the LSB's own practices and policies, in relation to staff/stakeholder communication and focus on equalities through our entire work programme, are examples of the approach we promote to others. We will do this by monitoring and publishing the diversity of our staff.

4.11.1 Clarity of Objective?

The Committee considers the Objective unnecessary and is simple tautology when seen as a sentence, as above.

4.11.2 Does the Committee agree with the Objective?

The Committee is of the view that the Objective should be framed as follows:

To ensure that the LSB's own practices and policies, in relation to all communications and ethos are examples of the approach we promote to others. We will do this by monitoring and publishing the diversity of our staff.

4.11.3 Is the Objective achievable in the timeframe?

There appears to be no reason why the Objective would not be achievable in the timeframe.

4.11.4 Is attainment of the Objective measurable?

The Committee believes it is.

4.12 Objective: To ensure that the LSB's own practices and policies, in relation to staff/stakeholder communication and focus on equalities through our entire work programme, are examples of the approach we promote to others. We will do this by when tendering for services, we will work with firms who can demonstrate that they have a commitment to equality and diversity.

4.12.1 Clarity of Objective?

(a) The language here has been badly mangled. It is as though this Objective was added as an afterthought.

(b) The Committee believe that tendering for services was an area where the LSB could 'tick boxes' and demonstrate achievement.

4.12.2 Does the Committee agree with the Objective?

- (a) The Committee suggests the Objective is redrafted in its entirety. Presently it is a powerful demonstration of the need for the highest standards to be adopted by the LSB.
- (b) The Committee is of the view that the Objective should be framed as follows:

To ensure that the LSB's own practices and policies, in relation to all communications and ethos are examples of the approach we promote to others. We will do this by ensuring our suppliers share a similar ethos to diversity and equality.

4.12.3 Is the Objective achievable in the timeframe?

There appears to be no reason why the Objective would not be achievable in the timeframe, so long as the language is revisited. The Committee does not think the matter needs to be put out to further consultation if our suggested wording is adopted.

4.12.4 Is attainment of the Objective measurable?

Once the Objective is rewritten the Committee believes it is.

4.13 Objective: To ensure that the LSB's own practices and policies, in relation to staff/stakeholder communication and focus on equalities through our entire work programme, are examples of the approach we promote to others. We will do this by applying recruitment processes that are in line with our Equality Duty.

4.13.1 Clarity of Objective?

The Committee considers the Objective requires redrafting, with the essence of what is intended made plain.

4.13.2 Does the Committee agree with the Objective?

The Committee is of the view that the Objective should be framed as follows:

To ensure that the LSB's own practices and policies, in relation to all communications and ethos are examples of the approach we promote to others. We will do this by applying recruitment processes that are in line with our Equality Duty.

4.13.3 Is the Objective achievable in the timeframe?

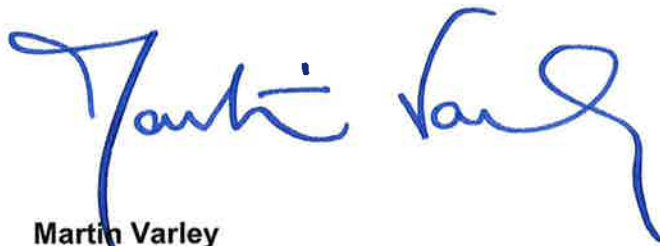
There appears to be no reason why the Objective would not be achievable in the timeframe.

4.13.4 Is attainment of the Objective measurable?

The Committee believes it is.

I hope the foregoing is of assistance to you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Martin Varley', written in a cursive style.

**Martin Varley**  
**Chairman**