

GUIDANCE ISSUED BY THE LEGAL SERVICES BOARD TO APPROVED REGULATORS ON GATHERING AN EVIDENCE BASE ABOUT DIVERSITY ACROSS THE LEGAL WORKFORCE AND PROMOTING TRANSPARENCY AT ENTITY LEVEL

Version 1: 13 July 2011

INTRODUCTION

The provision of Guidance

1. Section 162 of the Legal Services Act 2007 (the 2007 Act) allows the Board to give Guidance:
 - a. about the operation of the 2007 Act and any order made under it
 - b. about the operation of any rules made by the Board under the 2007 Act
 - c. about any matter relating to the Board's functions
 - d. for the purpose of meeting the Regulatory Objectives
 - e. about the content of licensing rules
 - f. about any other matters about which it appears to the Board to be desirable to give Guidance.
2. Guidance under s.162 may consist of such information and advice as the Board considers is appropriate. The Board will have regard to the extent to which an approved regulator has complied with this Guidance when exercising its functions.

BACKGROUND

3. The LSB published a consultation document entitled 'Increasing diversity and social mobility in the legal workforce: transparency and evidence' on 15 December 2010. In July 2011 it published its decision document. This Guidance forms part of that decision document.

Application of the Guidance

4. The Board considers that the information provided here gives sufficient clarity as to the delivery of the expectations that the LSB has set out, whilst allowing an appropriate degree of discretion for approved regulators to decide how best they can be achieved.
5. Section 162(5) of the 2007 Act says "when exercising its functions, the Board may have regard to the extent to which an approved regulator has complied with any Guidance issued under this section which is applicable to the approved regulator".
6. The LSB will examine the extent to which, in delivering the LSB's expectations, an approved regulator has followed the approach set out in this Guidance. Approved regulators will be asked to report back to the LSB with evidence as to how they have delivered the expectations.
7. The Guidance sets out the issues that approved regulators may wish to take into account in assessing how they will deliver the expectations. There are a number

of alternative ways in which these expectations could be delivered and the Board expects each approved regulator to have available evidence to support its choice of approach. This evidence would need to be persuasive, reasonable and present the regulatory rationale. Section 28 of the Act imposes a duty on each approved regulator, so far as is reasonably practical, to act in a way which it considers is most appropriate for the purpose of meeting the regulatory objectives.

GUIDANCE ON DATA COLLECTION AND PUBLICATION

8. This document provides Guidance for the delivery of the expectations which have been identified by the LSB for approved regulators, for the purpose of meeting the regulatory objectives, and, in particular, encouraging an independent, strong, diverse and effective legal profession. These expectations relate to the collection and publication of diversity data at the level of individual firms and chambers.
9. By January 2012 approved regulators should submit to the LSB their finalised detailed plans setting out how they intend to deliver our expectations, and begin implementing them no later than March 2012. The expectations should be achieved by approved regulators by the end of 2012.
10. The Board recognises that there is flexibility in the method or approach that each approved regulator chooses to adopt when meeting the expectations, which may result in a departure from this guidance.

DELIVERING THE EXPECTATIONS

11. Approved regulators should demonstrate how the expectations will be delivered. This is because the Board considers that the expectations are necessary to meet the Regulatory Objective about encouraging diversity (and the regulatory objectives more broadly) through:
 - a. gathering an evidence base about the composition of the workforce to inform targeted policy responses and to be used as a benchmark to evaluate the effectiveness and impact of existing diversity initiatives
 - b. promoting transparency about workforce diversity at entity level as an incentive on owners/managers to take action (both in terms of 'peer pressure' and better information for corporate and individual consumers and potential employees, which they can use to inform their choice of law firm).
12. The suggested approach is likely to include, but need not be limited to:
 - a. The approved regulators requiring firms and chambers to conduct a diversity monitoring exercise which will give every individual in their workforce (both lawyer and non-lawyer), an opportunity to self-classify against the following characteristics: age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities.
 - b. To ensure consistent data categories across the different branches of the legal profession, it is suggested that approved regulators recommend that regulated entities adopt the model questionnaire set out in this Guidance. This will allow the data to be aggregated and used to build a picture of the diversity profile of the legal workforce as a whole.
 - c. Where approved regulators regulate entities, the approved regulators should require firms and chambers to publish summary data about their workforce in

relation to all the characteristics listed at 12 a. above, except sexual orientation and religion/belief:

- i. to ensure consistent data categories for the publication requirement it is suggested that the approved regulators provide firms/chambers with a template for publication which includes a breakdown of the data by levels of seniority
 - ii. we recommend the approved regulators make provision about arrangements or conventions on the reporting and publication of summary data which should, where practicable, be consistent across approved regulators.
- d. The approved regulators to collate firm and chambers level diversity data and publish to give an aggregate view of the diversity make-up of each branch of the profession.
- e. The approved regulators to include a description of their approach to the periodic timing of collection and publication of firms and chambers information, for example if this should be repeated annually, bi-annually, or every three years. This should take into account the regulatory and administrative burden of the exercise and change within the profession.

JUSTIFYING A DEPARTURE FROM THE GUIDANCE

13. Each approved regulator that departs from this Guidance should be able to justify its approach. To justify an approach, the Board would expect an approved regulator to establish evidentially the extent to which it has concluded that the departed approach is the most appropriate way of acting compatibly with the Regulatory Objectives and is in accordance with the Better Regulation Principles and regulatory best practice. This assessment is likely to include, but need not be limited to, consideration of:

- a. an outline of the alternative approach and how it differs from the guidance
- b. a description of how the alternative approach meets the expectations
- c. a description of the risks associated with the alternative approach in that the expectations may not be met and how are these risks are being mitigated
- d. a justification of why the alternative approach has been adopted in favour of the approach set out in the guidance
- e. a summary of the potential benefits to the approved regulator in terms of resource and administration burden due to adopting the alternative approach
- f. a summary of the potential impacts both positive and negative on the entity from adopting the alternative approach
- g. any evidence through pilots that supports the adoption of the alternative approach.

14. The Board considers that such justification needs to set out clearly how the expectations will be delivered.

Model Questionnaire

What is the purpose of collecting this data?

The main purpose of collecting this data is to:

- gather evidence about the composition of the legal sector workforce across a wide range of diversity indicators, to enable firm/chambers and regulators to make informed decisions about the action needed to encourage greater diversity in the legal workforce
- achieve transparency about the workforce diversity of individual firms or chambers.

Why is this important? Am I required to complete it?

The legal profession and wider legal services workforce should reflect the society it serves. To achieve a profession which is truly representative at all levels requires regulators and the profession itself to identify barriers to entry and progression and begin to break them down. By doing this, we will ensure that the legal workforce is open to the widest possible pool of talent.

The Legal Services Act 2007 includes a specific regulatory objective to “encourage a strong, independent, diverse and effective legal profession”. The Legal Services Board has given approved regulators Guidance as to how that regulatory objective should be met. To comply with its duty of acting in a way that it considers is most appropriate for the meeting of that objective; your approved regulator has decided to ask the organisations it regulates to survey the individuals working for them. Completion of the questionnaire is voluntary. The Equality Act 2010 also puts approved regulators under a duty to advance equality of opportunity between different groups.

How is this questionnaire structured and do I need to answer each question?

This questionnaire is structured by asking a series of questions based on the list of indicators below. The collection of data on these indicators is intended to fill the gaps in the existing information available about the diversity of the legal workforce and provide an overview of the whole workforce (lawyers and non-lawyers) in individual firms and chambers. The questions cover:

- your job role
- age
- gender

- disability
- ethnic group
- religion or belief
- sexual orientation
- socio-economic background
- caring responsibilities

While we encourage all participants to answer each question, this survey is voluntary. Each question includes the option of indicating 'Prefer not to say' if you do not feel comfortable answering any question.

How will data protection and anonymity be ensured?

You are asked to provide this data anonymously. By completing the questionnaire, you consent to the use of this data for the purposes of providing published summary data about the characteristics of the workforce in your organisation (firm, chambers etc). Your anonymous responses will also be reported to professional regulators to enable analysis be carried out on trends in the legal services workforce.

The information gathered through this survey will be aggregated to ensure further anonymity of the results. It is intended that a summary of the workforce data for your organisation (firm, chambers etc) may include a breakdown of each diversity indicator by job status and role, but will not include any analysis that links responses against different diversity characteristics or individuals. For example, the analysis may indicate that there are 10 female partners and 10 Christian associates, but will not say that there are five female partners who are Christian, three of whom are gay or lesbian and two of whom consider themselves disabled.

Where data is aggregated from relatively small data sets (for example where there are a small number of employees in an organisation, or there are few individuals in a particular category), there is a risk that anonymity cannot be ensured and individual respondents could be identifiable.

Provision of data in response to this questionnaire is voluntary. It is up to you to decide whether you wish to disclose it. By doing so, you consent to the data being used for the purposes outlined here.

How will the data be interpreted & what baseline will be used for comparison?

The data collected from you and your colleagues through this survey will be published in summary by your organisation (e.g. on its website). This will encourage

your organisation to think about what action is appropriate to try to encourage greater diversity within your workforce. It will enable corporate and individual consumers to take into account your organisation's performance in relation to diversity when deciding whether to select you as a service provider. The information will also be aggregated by the approved regulator of your organisation (e.g. Solicitors Regulation Authority, Bar Standards Board) to form a baseline of the whole workforce in the legal services sector.

What changes to my organisation's or approved regulator's equality work could happen as a result of collecting this information?

This information will help your organisation and professional regulators to understand the profile of the existing workforce and identify particular areas that require further exploration and action (for example, barriers to progression for individuals with particular characteristics, or deficiencies in existing processes). The aggregate data will also enable professional regulators to measure the impact of changes to the regulatory structure (such as the impact of Alternative Business Structures), as the baseline will enable changes in the diversity profile of the workforce to be identified.

The questionnaire starts on the following page

Questionnaire

Please answer each question in turn by choosing one option only, unless otherwise indicated. If you do not wish to answer the question please choose the option 'Prefer not to say' rather than leaving the question blank.

1. About you

- (a) If you are an authorised person¹ for the purposes of the Legal Services Act 2007 (i.e. you hold a practising certificate issued by one of the approved regulators), please indicate your professional qualification(s) and role (tick all that apply if you are dual qualified and have a current practising certificate from more than one approved regulator):

Barrister	QC	
	Tenant/Member	
	Other (incl Pupil)	
Solicitor	Partner (or equivalent)	
	Assistant/Associate	
	Other (incl Consultant)	
Legal Executive (Fellow)	Partner (or equivalent)	
	Other	
Licensed Conveyancer	Partner (or equivalent)	
	Other	
Patent Attorney	Partner (or equivalent)	
	Other	
Trade Mark Attorney	Partner (or equivalent)	
	Other	
Cost Lawyer	Partner (or equivalent)	
	Other	
Notary	Partner (or equivalent)	
	Other	
Prefer not to say		

- (b) If you do not fall into any of the categories listed above, please indicate which of the following categories best fits your role:

¹ The definition of an 'authorised person' is set out in the [Legal Services Act 2007](#), Section 18(1) For the purposes of this Act "authorised person", in relation to an activity ("the relevant activity") which is a reserved legal activity, means - (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or (b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity.

Any other fee earning role (e.g. trainee solicitor, legal executive (not Fellow), paralegal)	
Any role directly supporting a fee earner (e.g. legal secretary, administrator, barristers clerk, practice manager, legal assistant, paralegal)	
A managerial role (e.g. Director/non-lawyer Partner/Chief Executive/Practice Director or similar, Head of Legal Practice (HoLP)/Head of Finance & Administration (HoFA) or similar)	
An IT/HR/other corporate services role	
Prefer not to say	

2. Your role in your organisation

Please note that this question applies to self-employed as well as employed persons.

- (a) Do you have a share in the ownership of your organisation (e.g. equity partner, shareholder)?

Yes	
No	
Prefer not to say	

- (b) Do you have responsibility for supervising or managing the work of lawyers or other employees?

Yes	
No	
Prefer not to say	

3. Age

From the list of age bands below, please indicate the category that includes your current age in years:

16 - 24	
25 - 34	
35 - 44	
45 - 54	
55 - 64	
65+	
Prefer not to say	

4. Gender

What is your gender?

Male	
Female	
Prefer not to say	

5. Disability

The Equality Act 2010 generally defines a disabled person as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities.

(a) Do you consider yourself to have a disability according to the definition in the Equality Act?

Yes	
No	
Prefer not to say	

(b) Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?

Yes, limited a lot	
Yes, limited a little	
No	
Prefer not to say	

6. Ethnic group

What is your ethnic group?

Asian / Asian British

Bangladeshi	
Chinese	
Indian	
Pakistani	
Any other Asian background (write in)	

Black / African / Caribbean / Black British

African	
Caribbean	
Any other Black / Caribbean / Black British (write in)	

Mixed / multiple ethnic groups

White and Asian	
White and Black African	
White and Black Caribbean	
White and Chinese	
Any other Mixed / multiple ethnic background (write in)	

White

British / English / Welsh / Northern Irish / Scottish	
Irish	
Gypsy or Irish Traveller	
Any other White background (write in)	

Other ethnic group

Arab	
Any other ethnic group (write in)	

Prefer not to say

Prefer not to say	
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7. Religion or belief

What is your religion or belief?

No religion or belief	
Buddhist	
Christian (all denominations)	
Hindu	
Jewish	
Muslim	
Sikh	
Any other religion (write in)	
Prefer not to say	

8. Sexual orientation

What is your sexual orientation?

Bisexual	
Gay man	
Gay woman/lesbian	
Heterosexual/straight	
Other	
Prefer not to say	

9. Socio-economic background

- (a) If you went to University (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?

Yes	
No	
Did not attend University	
Prefer not to say	

- (b) Did you mainly attend a state or fee paying school between the ages 11 – 18?

UK State School	
UK Independent/Fee-paying School	
Attended school outside the UK	
Prefer not to say	

10. Caring responsibilities

(a) Are you a primary carer for a child or children under 18?

Yes	
No	
Prefer not to say	

(b) Do you look after, or give any help or support to family members, friends, neighbours or others because of either:

- Long-term physical or mental ill-health / disability
- Problems related to old age?

(Do not count anything you do as part of your paid employment)

No	
Yes, 1 - 19 hours a week	
Yes, 20 - 49 hours a week	
Yes, 50 or more hours a week	
Prefer not to say	

Thank you for completing this questionnaire