

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	29 April 2015	<b>Item:</b> Paper (15) 17

<b>Title:</b>	LSB leadership role on diversity	
<b>Workstream(s):</b>	Protecting consumers and the public interest	
<b>Author / Introduced by:</b>	Tom Peplow, Regulatory Associate <a href="mailto:tom.peplow@legalservicesboard.org.uk">tom.peplow@legalservicesboard.org.uk</a> / 0207 271 0072 Kate Webb, Head of Regulatory Reviews and Investigations <a href="mailto:kate.webb@legalservicesboard.org.uk">kate.webb@legalservicesboard.org.uk</a> / 020 7271 0090	
<b>Status:</b>	Protect	

<b>Summary:</b>
This paper sets out a proposed approach for the LSB to show effective leadership on improving diversity in the legal sector.

<b>Recommendations:</b>
The Board is invited to <u>agree</u> with our longer-term strategy of embedding diversity into the regulatory standards that we use to judge the performance of the approved regulators.

<b>Risks and mitigations</b>	
<b>Financial:</b>	Resources would be required for the proposed research. The Business Plan should allow for this work but funding will need to be considered in light of other priorities
<b>Legal:</b>	Regulatory performance and oversight work programme should provide sufficient enforcement powers if needed
<b>Reputational:</b>	LSB has made a commitment to delivering results on diversity; reputational risk if approach does not have desired impact
<b>Resource:</b>	Dedicated staff resource will be required if Board agree approach.

Consultation	Yes	No	Who / why?
<b>Board Members:</b>	X		A draft version of this paper has been shared with Anneliese Day QC and Terry Babbs. No comments were received but we fully appreciate that we could only give a very short timescale before papers were dispatched for the 29 April Board meeting.
<b>Consumer Panel and others:</b>		X	

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	
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### **Legal Services Board (LSB) leadership role on diversity: 'direction of travel'**

#### **Recommendation**

1. At the Board meeting on 27 January 2015, it was suggested the LSB considers how it shows effective leadership on diversity. The Board is invited to agree the following 'direction of travel' to provide a guiding framework for our subsequent more detailed work on this subject.
2. We propose that to show leadership in this area we elevate the importance of diversity over time by embedding it within our regulatory standards. This is our core mechanism for holding the approved regulators to account for their performance.
3. It is proposed the LSB identifies good practice in relation to regulatory interventions to support progress on diversity, and publishes success criteria setting out how this can be achieved. The regulators can then be asked to confirm what they are doing on diversity to deliver the regulatory objectives (specifically the objective of encouraging an independent, strong, diverse and effective legal profession), with their responses assessed against the success criteria we have identified.
4. We have adopted a similar approach for other issues where we wanted to adopt a more assertive leadership role. For example, the LSB's work on success criteria for regulatory interventions to address quality risks<sup>1</sup> will be included within the regulatory standards from 2015/16 onwards.

#### **Background**

5. For a considerable period of time, there has been reasonable diversity in the numbers of individuals with different protected characteristics<sup>2</sup> entering the legal

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<sup>1</sup> See pages 26-28 of Approaches to quality: summary of responses to consultation and LSB response

[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20120913\\_summary\\_responses\\_recd\\_lsb\\_response\\_approaches\\_quality\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20120913_summary_responses_recd_lsb_response_approaches_quality_final.pdf)

<sup>2</sup> Protected characteristics in the Equality Act 2010 – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.  
<http://www.legislation.gov.uk/ukpga/2010/15/section/4>

professions. However, this diversity at entry has not transferred into similar diversity at senior levels of the legal sector; there remain significant pay differentials in the legal professions; and the high BME figure at entry may potentially be masking an under-representation from certain BME groups.

6. Delivery of all the regulatory objectives, not just the objective of encouraging an independent, strong, diverse and effective legal profession, requires a diverse workforce (not just a diverse profession) which reflects the society it serves. The Equality Act 2010 also includes a public sector equality duty which requires all bodies exercising public functions (including the LSB and approved regulators) to have regard to:
  - eliminating unlawful discrimination, harassment and victimisation
  - advancing equality of opportunity between different groups
  - fostering good relations between different groups.
7. The Board has previously stated it would not be appropriate, or effective, for the LSB to lead delivery of a strategy on diversity but that it should make clear its expectations of regulators<sup>3</sup>. Given the wide range of initiatives already underway amongst the regulators and others, launch by the LSB of new public-facing initiatives has also not been viewed as the most efficient or effective use of the LSB's limited resources. Rather, to add most value the LSB has focused on:
  - Influencing the debate on diversity to bring the issues into the main stream and ensure they are not an 'optional extra'.
  - Encouraging regulators to target initiatives based on evidence and to assess their impact.
  - Encouraging firms and chambers to gather and publish data about the diversity of their workforce.
8. Publication of our guidance on diversity<sup>4</sup> in July 2011 has been a key part of our approach. The two central aims of our guidance are:
  - Establishing a robust evidence base on diversity in the legal professions so actions can be targeted in the right areas and their impact assessed.
  - Promotion of transparency at entity level to create both a regulatory imperative but, more importantly, a commercial incentive to take action.
9. The professional bodies and regulators in the legal sector have come a long way from the initial resistance to regulatory involvement in this area in 2009, when the LSB began looking at this. At that time there was a limited focus on diversity as a regulatory issue; this has now changed significantly. For example, a

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<sup>3</sup> See 30 November 2009 Legal Services Board meeting minutes

<sup>4</sup> LSB guidance on gathering an evidence base about diversity across the legal workforce and promoting transparency at entity level  
[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/diversity\\_guidance\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/diversity_guidance_final.pdf)

number of legal services regulators now have published equality strategies and are fully considering diversity in their analysis of the risks faced in their sectors<sup>5</sup>. Also, activities to support diversity, that were previously uncommon or largely undertaken by the more innovative of firms, are now increasingly becoming part of normal business practice for legal services providers<sup>6</sup>.

## Proposed approach

10. In the LSB's 2015/16 Business Plan we have said we will review and monitor the progress made by regulators in delivering their implementation plans to gather and evaluate diversity data, and that we will 'continue proactively to champion the regulators' work on diversity, and seek to share and support developments in this area across the legal sector'.
11. There are limited resources available to the LSB, so to use these limited resources to achieve the greatest impact we propose adopting the approach the LSB has followed in relation to its published success criteria for regulatory interventions to address quality risks<sup>7</sup>. We propose to identify good regulatory practice in diversity, publish clear success criteria in relation to achieving this and (following a run-in period) use the regulatory performance and oversight programme to hold the regulators to account against these success criteria.
12. Once these success criteria are incorporated into the regulator performance and oversight work programme, regulators would then be expected to take account of these criteria when providing evidence of what they are doing on diversity to deliver the regulatory objectives (specifically but not exclusively the objective of encouraging an independent, strong, diverse and effective legal profession).
13. The approach would consist of the following four stages<sup>8</sup>:

### *Stage one*

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5 See the Solicitors Regulation Authority's Equality, Diversity and Inclusion Strategy: 2014/15 to 2016/17, its Risk Outlook 2014/15, and the Bar Standards Board's Equality Strategy 2013 – 2016  
<http://www.sra.org.uk/risk/outlook/risk-outlook-2014-2015.page>  
<http://www.sra.org.uk/sra/equality-diversity/strategy/edi-strategy.page>  
<https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-strategy-2013-2016/>

<sup>6</sup> See Guardian article - Are law firms doing enough to encourage diversity?

<http://www.theguardian.com/law/2014/aug/22/law-firms-importance-of-diversity>

<sup>7</sup> See pages 26-28 of Approaches to quality: summary of responses to consultation and LSB response

[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20120913\\_summary\\_responses\\_recd\\_lsb\\_response\\_approaches\\_quality\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20120913_summary_responses_recd_lsb_response_approaches_quality_final.pdf)

<sup>8</sup> It is anticipated that stages 1 to 3 of the approach could be completed within the 2015/16 Business Plan year.

Initial research work completed to confirm diversity issues in the legal sector and what regulators should be doing to support the progress needed. This would cover what is happening in the legal sector and across all sectors of the economy to support progress with improving diversity, along with the tools we have provided in this area (our diversity guidance<sup>9</sup>). Examples of good practice to be identified along with what regulators could be doing to encourage this.

### *Stage two*

Consultation paper published providing an overview of diversity issues in the legal sector and setting out a range of existing or alternative regulatory interventions that support more effective progress on diversity. Consultation process used to develop success criteria. For example, where regulators regulate entities they provide firms/chambers with a template for publication which includes a breakdown of the data by levels of seniority to ensure publication of consistent data categories<sup>10</sup>.

### *Stage three*

Consultation response document published setting out a series of success criteria. Document makes it clear that we expect the regulators to take account of these criteria in their work plans, and to provide evidence of their actions in relation to pursuing these criteria via our regulator performance and oversight work programme.

### *Stage four*

Completion of a run in period ahead of the full incorporation of our published success criteria into the LSB's regulator performance and oversight work programme<sup>11</sup>. The run in period will be used to raise awareness of our expectations and allow regulators to incorporate this work into their work plans as necessary.

## **Issues**

14. Representative bodies have historically played an important role in addressing diversity issues in the legal sector and the LSB continues to support this. Where there are shared agendas, and value in representative bodies and regulators working together, the LSB encourages this, but diversity is not a representative

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<sup>9</sup> LSB guidance on gathering an evidence base about diversity across the legal workforce and promoting transparency at entity level

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/diversity\\_guidance\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/diversity_guidance_final.pdf)

<sup>10</sup> See paragraph 12.c.i of LSB guidance on gathering an evidence base about diversity across the legal workforce and promoting transparency at entity level

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/diversity\\_guidance\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/diversity_guidance_final.pdf)

<sup>11</sup> An indicative timetable for this work, based on the timings of previous Regulatory Standards exercises, would target a timeline of full incorporation into an exercise in 2018/19

issue alone. Critically, ownership of delivery of the regulatory objectives belongs to the regulators.

15. Issues with regulators' involvement in supporting progress on diversity and the burdens this imposes have been raised in our work on the cost of regulation and there continues to be resistance from some in the sector to this work. Delivery of the regulatory objectives, not least the objective to encourage an independent, strong, diverse and effective legal profession, clearly adds to the significance of general equality law, and the responsibilities regulators have in this area. The LSB has long argued, for example, that the public interest in a diverse judiciary requires a diverse legal profession. However, as with all of the regulators' work, there are many competing priorities for them to take into account and the LSB must be realistic as to what it is possible for each regulator to achieve. The envisaged integration of the LSB's work on diversity into its regulatory performance and oversight work programme should be a positive selling point for the regulators, as it would ultimately reduce the number of separate LSB work streams for them to deal with.

## Annex A

Snapshot of diversity in the legal services workforce (%) - where more than one variable or reporting is statistically low, diversity strands have not been included

		Women	BME	Disability	Fee paying school	Primary carer for a child or children under 18	First generation of family to attend University
Population (ONS) <sup>12</sup>		51	15	18	7 <sup>13</sup>	-	-
SRA 2013/14 workforce data <sup>14</sup>	Solicitor Partner or Equivalent	31	13	3	31	35	57
	Solicitor or Other Lawyer	59	15	3	24	28	45
	Other staff	77	12	3	9	25	22
BSB 2014 <sup>15</sup>	QC	12	6	4	55	13	48
	Practising Bar	38	12	6	34	24	47
CLC 2013 <sup>16</sup>		69	11	2	7	25	27
CILEx 2015 <sup>17</sup>		74	12	2	-	-	-
IPReg		5	34	1	-	-	-

<sup>12</sup> <http://www.ons.gov.uk/ons/index.html>

<sup>13</sup> Elitist Britain? - Child Poverty and Social Mobility Commission  
<https://www.gov.uk/government/news/elitist-britain-report-published>

<sup>14</sup> <http://www.sra.org.uk/sra/equality-diversity/reports/diversity-legal-profession-2013.page>

<sup>15</sup> Raw data provided directly to the LSB will be published on the LSB research website

<sup>16</sup> [http://www.conveyancer.org.uk/CLCSite/media/Corporate-Docs/Diversity-Profile-Narrative-170914-\(2\).pdf](http://www.conveyancer.org.uk/CLCSite/media/Corporate-Docs/Diversity-Profile-Narrative-170914-(2).pdf)

<sup>17</sup>

[http://www.cilex.org.uk/about\\_cilex/equality\\_and\\_diversity/diversity\\_statistics/cilex\\_membership\\_diversity.aspx](http://www.cilex.org.uk/about_cilex/equality_and_diversity/diversity_statistics/cilex_membership_diversity.aspx)

<b>2014<sup>18</sup></b>						
<b>MoF</b> <b>2014<sup>19</sup></b>	26	10	3	38	17	51
<b>CLSB</b> <b>2014<sup>20</sup></b>	36	3	5	13	27	25

Figures exclude prefer not to say and non-responses; except for the CLC, MoF, CLSB and BSB figures where these are included

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<sup>18</sup> <http://ipreg.org.uk/public/about-us/diversity-and-inclusion-initiatives/>

<sup>19</sup> <http://ipreg.org.uk/public/about-us/diversity-and-inclusion-initiatives/>

<sup>20</sup> [http://www.clsb.info/wp-content/uploads/2014/06/Costs\\_Lawyers\\_2014.pdf](http://www.clsb.info/wp-content/uploads/2014/06/Costs_Lawyers_2014.pdf)