

Diversity data collection and transparency

A report on regulators' progress against LSB guidance issued under section 162 of the Legal Services Act 2007

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Introduction

1. In July 2011, the Legal Services Board (LSB) issued guidance to regulators on diversity data collection across the legal workforce and the promotion of the transparency of this data at entity level. We have now completed a review of regulators' progress in delivering the objectives in our guidance. The findings of this review are provided below.
2. The review has shown that we now have data on diversity and social mobility where in many areas none existed before and, crucially, the concept of collecting and publishing data to stimulate action has been accepted. Where there have been challenges the regulators are now focusing upon how they can best address them.
3. To support this the LSB hosted a roundtable with regulators on 18 September. The outcome of that discussion is also contained within this report.

Diversity in the legal services market

4. It is now widely accepted that while diversity in the legal sector has improved this is predominantly at the lower levels of the profession and the expected 'trickle-up' effect has not occurred. We believe that to achieve real change, right across the profession, changes need to be made in the way the profession itself makes decisions.
5. These are decisions on:
 - Work allocation and reward within legal businesses
 - How success and commitment are measured and valued
 - Individual business relationships
 - Client expectations

What we are doing

6. The LSB has a regulatory objective to 'encourage an independent, strong, diverse and effective legal profession'. We believe regulators need to understand what issues are preventing the legal workforce from being open to the widest pool of talent possible at all levels, and do what they can to incentivise the changes in behaviour required.
7. Our strategy on diversity is to shed light on performance by requiring law firms and chambers to collect and publish information on the make-up of their workforce.

8. Consumers should be able to access information at the level of an individual legal services provider to inform their purchasing decisions alongside other factors such as price or quality. Regulators should also be looking to shift the focus onto firms and chambers and to use the data to hold them to account for their actions. Over time we expect this to have a direct impact on how they are regulated, so those with good response rates that are taking positive steps towards improving diversity and social mobility are treated differently (in respect of these duties) to those that do not.
9. The duties introduced by our guidance¹ are not onerous and simply require the completion of an annual diversity survey. In many cases this is something that a number of individuals and firms will already be used to doing. For some parts of the profession, the survey will need to be completed even less frequently.
10. In the longer term, we expect that regulators will be able to use the improved information on diversity available in their consideration of what further regulatory action can be taken to advance diversity and social mobility in the legal profession.

Review findings

11. The review has found that the concept of collecting and publishing data has been widely accepted as a means to stimulate action. As a result:
 - regulators have moved away from thinking primarily about diversity initiatives and are building upon historical data sources where they exist
 - data for the legal sector has been published for the first time on a number of the protected characteristics defined in the Equality Act 2010
 - we have seen some very positive examples of action from regulators.
12. An example of the type of action taken is the Solicitors Regulation Authority (SRA)'s recent work linking diversity data collection to a thematic review of their broader equality and diversity requirements, and its flagging of an insufficiently diverse profession in its Risk Outlook for 2013. The Bar Standards Board (BSB) has also engaged with a sample of chambers on the introduction of its new equality and diversity regulations. In addition, the smaller regulators are focusing on diversity and taking a consistent approach to data collection.

¹ LSB diversity guidance - issued in July 2011
http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/diversity_guidance_final.pdf

Progress with action plans

Action	Bar Standards Board (BSB)	Council for Licensed Conveyancers (CLC)	Costs Lawyers Standards Board (CLSB)	Intellectual Property Regulation Board (IPReg)	Chartered Institute of Legal Executives (CILEX)	Master of the Faculties	Solicitors Regulation Authority (SRA)
Data collected	Yes	Yes	Yes	Partially	Yes	Yes	Yes
Published	Yes	No	Yes	No	Partially	Yes	Yes
Status (RAG rating)	Green	Yellow	Green	Red	Yellow	Green	Green
Date of next publication	Dec 2013	May 2015	April 2014	Spring 2016	Spring 2014	Autumn 2014	February 2014

13. The review revealed that while much progress has been made, aggregated data is still not available in a way that allows detailed analysis across the legal profession and response rates have varied greatly. The key findings are below. These include the average completion rate achieved in surveys designed to gather data on all of the diversity characteristics in our guidance:

- The monitoring exercise run by the BSB to collect data from individual barristers achieved a completion rate of 5%². While the BSB is able to supplement this with data gathered in previous surveys in order to establish a much better picture of the make-up of their regulated community, it will need to consider how best to address this issue in future rounds. Chambers have also completed their own diversity monitoring exercises and the BSB will be completing a review of progress later this year
- The CLC's data collection process was completed in August 2013 but they are still completing the quality assurance process and the data has not yet been published. Current analysis indicates a completion rate of 56%
- The CLSB has completed two rounds of data collection. The first in 2012 achieved a completion rate of 28%, with this year's data collection process achieving a completion rate of 30%³
- IPReg's data collection process was delayed but they will shortly be able to publish diversity data for their regulated community

² BSB Board paper - Aggregated Diversity Data on the Barrister Profession BSB 098 (12) Annex A https://www.barstandardsboard.org.uk/media/1443096/aggregated_diversity_data_2012_research_reportfinal.doc

³ CLSB diversity survey evaluations <http://www.clsb.info/Documents/DiversityEvaluation.aspx>

- CILEx achieved a completion rate of 5.5%⁴ in the exercise they undertook to collect data in the eight categories in our guidance. Similarly to the BSB, they are able to supplement the data obtained in this exercise with data gathered in previous surveys to establish a better picture of the make-up of their regulated community. However, they are yet to publish data captured on religion, sexual orientation and caring responsibilities. ILEX Professional Standards, the regulatory arm of CILEx, are shortly to publish workforce data from CILEx members who operate their own legal practices.
- The Master of the Faculties has achieved a completion rate of 47%⁵.
- The average response rate among the 9,408 firms that participated in the SRA's diversity survey was 42%⁶.

Next steps

14. We believe a great deal more work is needed to ensure sufficient collection and publication of data across the profession. Regulators now need to focus on what can be done to improve the quality of the data and response rates achieved. We hope that consideration of the different approaches taken by regulators and the impacts these have had on the data collected will provide a number of solutions; both on how to incentivise individuals to provide their information and how it is subsequently used.
15. It appears the different ways that the surveys have been presented may have influenced the response rates. For example, some regulators relied on entities to provide data on their workforce, some surveys were sent directly to respondents and some surveys relied on the respondents specifically accessing the survey (rather than it being part of a renewal process for instance). This raises questions about professional culture and compliance and, as regulators' experience builds, we would expect greater consideration to be given to what drives the response rates they are achieving.
16. Regulators also need to do more to challenge firms in this area by, for example, using the opportunities open to them through the tailoring of regulatory requirements to recognise and reward firms that are doing well. The SRA have made some important advances in this regard. The involvement of staff from their equality and diversity team in supervision visits and the integration of compliance with equality and diversity requirements in firms' risk assessments are both positive examples of the kind of approach needed.
17. The diversity data collection and publication performance table below provides some further examples of how data collection and transparency can link into the

⁴ CILEx Omnibus Member Survey 2012
<http://www.cilex.org.uk/pdf/Omnibus%20Survey%20Summary%20Web.pdf>

⁵ Results of the 2011/12 Notaries Diversity Questionnaire
http://www.facultyoffice.org.uk/Notaries_Diversity.pdf

⁶ Diversity in the legal profession: Workforce data for solicitors firms 2012
<http://www.sra.org.uk/diversitydata/>

longer term objective of improving diversity and the potential role for regulators. This is the basis on which we propose to reassess regulators' progress after the second year's data collection exercise has been completed.

Diversity data collection and publication performance table

	Weakest performance	Good performance	Exemplar performance
Data collection and publication	<ul style="list-style-type: none"> ▪ Information is collected but not published in its entirety ▪ Information is not collected for all of the strands in the model questionnaire ▪ Regulator relies on representative body to collect and publish information 	<ul style="list-style-type: none"> ▪ Regulator collects and publishes information against all of the strands in the model questionnaire ▪ For entity regulators, responsibility for collecting and publishing data is placed on the entity and regulator tackles compliance issues 	<ul style="list-style-type: none"> ▪ Information is made available in a prominent way, for example a directory for regulated entities links through to diversity profiles so that consumers can access the information if they choose ▪ Entity regulators look at relative performance of firms in data collection exercise to see if low response rates are an indicator of wider issues
Response rates	<ul style="list-style-type: none"> ▪ Regulator does nothing to increase response rates 	<ul style="list-style-type: none"> ▪ Regulator takes a pro-active response to tackling low response rates and adapts their approach accordingly, for example entity collection of information 	<ul style="list-style-type: none"> ▪ Regulator sets targets for improving response rates supported by clear actions
Using the data	<ul style="list-style-type: none"> ▪ Regulators fails to analyse the information ▪ Limited analysis of the data is completed but not used 	<ul style="list-style-type: none"> ▪ Regulator incorporates diversity into supervision discussions 	<ul style="list-style-type: none"> ▪ Regulator risk rates firms on the basis of diversity, focusing supervision on those with the poorest diversity record

Diversity roundtable

18. On 18 September 2013 the LSB hosted a roundtable with the regulators where we discussed the findings of our review, what improvements could be made to regulators' diversity data collection processes and their plans for using the data to improve diversity.
19. The attendees agreed to consider the following actions to support their progress in delivering the objectives in our guidance:
 - Working in partnership with professional associations to enhance opportunities for delivering the aims in the guidance
 - Adopting innovative data collection strategies to improve response rates
 - Identification of diversity as a risk issue across regulatory work streams
 - Increasing organisation wide buy-in to tackling issues
 - Greater discussion of the challenges with this work between legal regulators and equivalent bodies in other sectors
20. We welcome action in these areas and strongly encourage regulators to make use of further face to face discussions in their diversity work, both between themselves and with the LSB.