

ENCOURAGING A DIVERSE PROFESSION – WHAT CAN WE DO AS REGULATORS?

Graeme MacLachlan outlines the Legal Services Board's approach to diversity and explains why the oversight regulator plans to shift the emphasis for action to the regulators.



The Legal Services Board is a passionate advocate for a diverse legal profession, reflecting its inclusion as a specific regulatory objective in the Legal Services Act. We promote diversity and social mobility through our regulatory framework and we expect the legal services regulators to do the same.

This autumn, we will be consulting on our diversity guidance for regulators, first issued in 2011, to make sure it remains up to date and relevant. The changes we propose are designed to give regulators the freedom to develop their own approaches to improving diversity throughout the profession.

Delivering real change

In our recent Market Evaluation published in July 2016, we found that the sector has made some progress but that there is still much to be done to encourage the profession to become more representative of society. At entry level, the profession is broadly comparable to the wider population; however, as one climbs higher, and in particular at senior levels, it remains disproportionately white and male.

There are many excellent initiatives, both in the legal sector and further afield, that have delivered real change to diversity profiles. Many of the most effective are led by firms themselves, in recognition of the benefits that diversity brings to their business. Professional bodies have a role to play too, and The Law Society has done good work to develop the business case for diversity and inclusion, identifying the benefits in the shifting profile of the profession. The Society set out recommendations and actions for firms across the size-spectrum that might deliver commercial benefit. We hope our new guidance will complement these initiatives and encourage regulators to play their part in spreading evidence of firm best practice within their regulated communities.

The work on diversity by the regulators to date has followed LSB guidance from 2011. Our aim five years ago was to develop the evidence everyone in the legal sector needed to analyse the diversity profile of the legal services profession, and we are encouraged by what has been done to date. The next steps are to take the data that has been collected and use it to inform policy changes to deliver more diversity initiatives.

In all our work, we aim to be proportionate. We understand that some of the regulators we work with have a lot more resource than others. We also know from other sectors that improvements in diversity and inclusion cannot be achieved without dedicated work. It has been positive to see how some regulators have started using the information they have collected over the last few years to implement changes. The Bar Standards Board (BSB) has introduced diversity as a consideration for policy decisions in all areas. Our hope is that regulators will be encouraged by the BSB's progress and work collaboratively amongst themselves to achieve similar change.

Igniting change

The LSB's focus this year is on developing our approach to diversity and shifting the emphasis for action to the regulators. The guidance we issued in 2011 was, necessarily, very prescriptive and focused on

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data collection. We gave regulators a series of deadlines to achieve certain things and, now they are all collecting data on diversity, we are changing our focus to a broader set of outcomes. While we have committed to reviewing this year's work in 18 months, we have drafted the proposed outcomes in a way that allows them to remain relevant even as the regulators make progress.

The outcomes we have suggested in this consultation are not supposed to be easily achievable, and nor do we expect regulators to achieve them all through the same work as others. The thinking behind this proposed switch to outcomes is to allow our colleagues within the regulators to assess their respective professions and policies and carry out the work they think can have the greatest impact on diversity and inclusion.

It might seem to some that this change is nothing more than an increase in the regulatory burden; it might be perceived that we are giving the regulators more work while also asking them to continue developing their understanding of the diversity profiles of their profession. We don't see things that way. The first iteration of the guidance was always a stepping stone to something else. Collecting data alone will not bring about change; change will only happen once the data is used to alter attitudes. We want to give regulators the freedom to explore ways they can achieve the outcomes we have suggested; we do not want to give them a list of new tasks to be completed by a deadline.

The consultation opened on 23 September www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2016/20160929_LSB_Diversity_Guidance_Consultation.pdf. We are hoping to receive representations from as broad a range of interested parties as possible. The more we can understand about the experiences of front line legal services providers the better. We aim to regulate in a way that delivers positive outcomes, and in this instance we hope to make our guidance to regulators as beneficial to you as possible. ●

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