

# Equality Objectives 2012/13

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Summary of responses received to consultation and LSB's  
response to them

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## Introduction

1. On 15 December 2011, the Legal Services Board (LSB) published its Equality Report for 2010/11 and a consultation on its proposed Equality Duty Objectives for 2012/13. The report and consultation were news released alongside the Board's consultation on its draft Strategic Plan for 2012-15 and Business Plan 2012/13. It was also distributed by email to regulators and representative bodies, consumer and citizen groups, other regulators and a variety of other interested parties. The consultation ran for a 12-week period, which ended on 9 March 2012.
2. This paper summarises the responses received and the Board's response.
3. As we stated in our consultation document, respecting and promoting equality and diversity is at the heart of what we do. We strongly support the concept that respecting equality and diversity means not putting artificial obstacles in the way of individuals and helping individuals overcome barriers to make full use of their potential and talents. We oppose and seek to eliminate all forms of unlawful discrimination. As an employer, we aim to recruit, motivate, develop and retain outstanding people from diverse backgrounds to deliver our priorities. Even as a relatively small organisation, we strive to support and promote equality both within our organisation and in delivering our external responsibilities. The diversity agenda is deeply established in the LSB's values and is taken account of across all projects
4. This approach will continue throughout all of our work during 2012/13 and beyond.

## Consultation process

5. We sought views on all aspects of the objectives and in particular whether the scope of objectives as expressed adequately reflected the LSB's role and forthcoming work programme.
6. We received seven responses to the consultation. Where respondents have provided their consent, we have published their response on our [website](#) alongside this consultation response document. **Annex A** lists the seven respondents.
7. We are grateful to each organisation that took time to consider our proposals and to respond. The Board considered each of the responses carefully and took account of them in finalising our Equality Objectives for 2012/13.
8. In considering the responses, we have taken into account that we received only a small number. In addition to this consultation exercise, however, we have over

the last two years, engaged with regulators, representative bodies, interest groups and academics working in the field to understand what a shared vision of how to improve diversity within the workforce would be and to meet our obligations under the 2010 Act. We have also:

- reviewed academic literature
- commissioned new research
- run a Diversity Forum bringing together approved regulators and professional/representative bodies
- conducted a workshop with interest groups
- held a separate consultation meeting with Diversity Managers of some City firms who are already conducting a monitoring process within their organisations and publishing summary diversity data
- met the largest two regulators, the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB), to gain feedback on the practicalities of implementing our proposals.

9. Detail of this work is contained in our [Equality Report for 2010/11](#), published as part of the consultation exercise, on 15 December 2011. Of additional relevance is the LSB response document and accompanying statutory guidance on [Increasing Diversity and Social Mobility in the Legal Workforce](#) published in July 2011.

## Consultation comments and LSB response

### General comments on whether the scope of the proposed objectives as expressed, adequately reflected the LSB's role and forthcoming work programme

10. Most respondents considered that in broad terms the objectives expressed and reflected the LSB's role and forthcoming work programme. For example, the SRA said that the proposed objectives rightly reflect the LSB's remit deriving from the Legal Services Act and the spirit of the Act's regulatory objectives. It agreed that as oversight regulator for legal services across England and Wales, the LSB's equality objectives should be aspirational, setting a clear vision for the legal services market. It also said that it was pleased to see that the LSB intends to put in place an action plan to support the delivery of its objectives. However, it also said that we should not only identify activities and projects, but confirm the outcomes that the LSB expects to see as a result. The Society of Black Lawyers (SBL) said that it was broadly in favour of the proposed objectives and understood the rationale for not changing the objectives too radically. It did however suggest that there was a material omission by being silent on monitoring and holding accountable the way in which approved regulators undertake their regulatory functions or activities. The Law Society agreed broadly with the proposed equality objectives and agreed that they reflected LSB's forthcoming work plan.
11. The BSB suggested that the objectives document should make a reference to the LSB's overarching aims and objectives. The Bar Council's Equality and Diversity Committee said it was surprised that the Chairman's foreword said there had been a lack of progress in certain parts of the profession. It felt that the legal profession compared well against others. The Tunbridge Wells, Tonbridge and District Law Society (TTDLS) provided a considered and comprehensive analysis, which we found most useful, of our proposed objectives and offered a number of drafting suggestions to ensure the objectives were 'Specific Measurable Achievable Realistic Timely'.

### **LSB response**

We were grateful to respondents for their comments and pleased that there was general agreement that the objectives expressed and reflected the LSB's role and forthcoming work programme. We have taken on board the helpful drafting suggestions. We will also put in place an action plan to support the delivery of the objectives and will publish this on our website. We will consider how we might incorporate outcomes into the action plan. We will also reproduce the LSB's overarching aims and objectives in the same document.

We recognise the good work undertaken by approved regulators through their specific diversity initiatives. However, while these are having an impact on diversity at entry level, the same cannot be said in terms of progression and retention at the higher levels of the profession, where we think that transparency through firm/chambers level publication will help drive progress. It is in this respect that we suggested that there had been a lack of progress in certain parts of the profession.

In response to the concern raised by the SBL on work to monitor and hold to account approved regulators, we believe that this is implicit in our revised Objective 1, which relates to our regulatory oversight role in its entirety, as well as referring to our specific work on transparency. Our work on regulatory standards, which requires approved regulators to self-assess themselves against a variety of better regulation principles, will provide an opportunity to explore the basis on which regulation activity is decided.

### **Comments on draft objectives**

***Objective 1: 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.***
- ***Reviewing the progress made by approved regulators in delivering their implementation plans.***
- ***Continuing to engage with approved regulators on how best to enhance a more diverse workforce across the legal sector.***

12. Most comments were on this objective. It needs to be born in mind that the themes brought up in respect of this objective were similar to those raised in the

LSB consultation in 2011 on *Increasing diversity and social mobility in the legal workforce: transparency and evidence*. While we have considered these comments, this consultation was not designed to be an opportunity to re-open our previously stated policy objectives in this area, (which had already been the subject of public consultation and debate), in particular in respect of assessing regulators implementation plans to gather and evaluate evidence and reviewing progress.

13. Respondents were in general agreement with the aspiration of the objective. The Law Society said it had emphasised in its response to the 2011 LSB diversity consultation of the need for such an approach. It believes that a diverse and inclusive legal profession benefits everyone. It (together with the Manchester Law Society (MLS)) expressed concern about the collection of diversity data, including the reliability and value of such data, especially if it is to be used as a basis for regulatory decisions. The Law Society believed that implementation by the LSB should be light touch, reflecting its oversight role.
14. The SRA was in general agreement with the objective but believed it could be made clearer. The BSB felt that the focus of the objective was largely on monitoring but did not mention wider issues such as access to legal education. The SBL argued that the LSB objectives should include a review of the staff diversity profile of the approved regulators.
15. The Bar Council said it had been publishing data by ethnicity and gender for 10-12 years. In addition to significant improvements that it said it had made in its method of data collection and storage, it had also set up a research section that was taking forward a planned research programme and enabling more data analysis.
16. The MLS said that in respect of the LSB assessing approved regulators Action Plans to collect and evaluate data, it does not see how collecting it under an optional or compulsory system can be regarded as comprehensive or true. The MLS said that it accepted that steps need to be taken to improve matters relating to equality and diversity, but believed that approved regulators could become alienated from those they regulate if they make critical regulatory decisions based on data that does not provide an accurate reflection of reality. The TTDLS said it did not believe that the LSB had the powers or moral authority to compel regulated entities to promote equality and suggested a reframing of the objective. It believed that the review of approved regulators progress should not be too intrusive.

### ***LSB response***

We are grateful to respondents for these comments and those that highlighted the pre-existing data collection and research already undertaken by some bodies. We recognise that there is a great deal of positive work being done by regulators, professional bodies, interest groups and individual providers backed by a significant commitment of resources.

As regards the form and reliability of collecting data for regulatory purposes, in response to the substantive consultation on this issue in July 2011, the LSB said that it had identified a lack of consistency in data collection across the professions. This was both in relation to the range of characteristics covered and the coverage and frequency of data collection requests. We expect approved regulators to work together to develop a more consistent approach and it is essential that the LSB, in its oversight role, continues to monitor implementation, and we will do so in a proportional way. We will provide our views of regulators' plans and will keep them under review during implementation.

We agree that the detail of the objective is couched primarily around our work to encourage transparency, which we believe is important to 'shine a light' on providers and to help to create commercial pressure for change. That said, the final bullet is broader and is designed to reflect that we will incorporate delivery of our equality duty into all of our work, including legal education.

The SBL makes a particularly interesting point regarding the transparency of staff make-up on regulators and disciplinary bodies. The LSB already publishes the diversity make-up of its staff and its Board and is aware that some regulators may do the same for their staff. We would welcome a decision from the approved regulators to do this and show leadership given our forthcoming requirements. The model questionnaire is available for use by any organisation.

As regards our moral and legal responsibilities in respect of equality and diversity, our remit extends to the legal services market as a whole. In our view, the legal workforce should reflect the society it serves. The LSB has statutory obligations under the Equality Act 2010 to fulfil our equality duty in our public role – as does each approved regulator also subject to the Equality Act (in respect of their public functions). This obligation is reinforced by the regulatory objectives of the Legal Service Act, one of which is to encourage an independent, strong, diverse and effective profession.



**Objective 2: 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 our research.**
- **Undertaking Equality Impact Assessment Screening (now called Equality Analysis) where appropriate when developing our programme and policies for consultation.**
- **Reviewing and developing the consumer toolkit that helps LSB staff identify and analyse consumer groups and their needs.**
- **Engaging with diversity groups and organisations.**
- **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.**

17. Most respondents agreed with the general aspiration of the objective but there were some comments and suggestions on the supporting actions that will help achieve the objective. The BSB said that the phrase “where appropriate” in relation to undertaking an Equality Analysis, should be deleted. It argued that as most policies will tend to have an effect on a wide range of people it would send the wrong message if “where appropriate” were included. The SRA supported the intention of the objective, but felt that the vision was unclear, particularly in relation to consumers who may be vulnerable. For example, it believed that protecting and getting a better deal for consumers was a key element of the diversity agenda within the legal service market.

18. The MLS welcomed the LSB’s intention to enhance its understanding of diversity in practices and said that it would be interested in working with the LSB in this regard. The TTDLS said it did not understand why there was a specific reference to “relevant consumer and interest groups” in the objective. It felt the objective was unclear as to who these groups might be. It felt that it also replicated the ‘Engaging with diversity groups and organisations’ supporting action. Finally, the TTDLS considered that it was unrealistic to have an aspiration that all decisions the LSB makes should take equality and diversity into account.

### *LSB response*

We were pleased that respondents were in general agreement with the overall objective and grateful for the comments to improve the phrasing of this objective, which we have taken on board, making changes where we felt able. We do not consider it would be proportionate to undertake an Equality Analysis for every aspect of work we undertake but we will always assess whether to complete one, hence our use of the phrase “where appropriate”. We will however continue to undertake Equality Analysis screenings where we consider there is likely to be significant implications for equality and diversity or where it involves a statutory change.

In respect of the supporting action to gain input from consumers, we have altered this to strengthen and clarify the objective. We agree that protecting and getting a better deal for consumers is a key element of the diversity agenda within the legal service market. We were grateful for the offer of the MLS to work with us to gain an understanding of diversity in legal practices and will continue to engage with stakeholders on this issue.

With regard to the comments from the TTDLS about our specific reference to “relevant consumer and interest groups” in the objective and who these groups were, the purpose of this phrasing was to signal our intention to engage with those groups with an interest in particular LSB work programmes and discussions. The LSB will continue to consult widely on most issues but we do not think we need to be specific in the objectives as to which these groups should be as they vary depending on the issue under consideration. Nonetheless, we have altered the wording slightly in order to make this objective clearer as suggested.

All decisions the LSB makes will take equality and diversity into account. Indeed the public sector equality duty we are subject to under the Equality Act is specific (at section 149) in requiring us to have due regard in the exercise of our functions to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who share a protected characteristic under the Equality Act.

**Objective 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:**

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

19. There were not many comments on this objective. The BSB expressed the view that it would be helpful for the LSB to say how it intends to use the data it gets from its own staff diversity survey. The TTDLS said that the objective felt too much like 'management speak'. It concurred with having publications available in all formats that are appropriate and economically viable to produce. It did not believe that it was the LSB's role to become too consumer focused. On tendering services and taking into consideration bidding firms' commitment to equality and diversity, it said that this could end up being an area in which the LSB just ticked boxes. It also suggested specific drafting changes to the objective and actions in support of the objective to make these read more clearly.

### ***LSB response***

We particularly welcomed the comments on the LSB's internal processes. In respect of use of the data on our staff survey, as with other very small organisations, one person in any category can represent a 3% shift and as we break the organisation down into levels of seniority, one person can shift results by as much as 20%. We therefore need to be careful in drawing firm conclusions from such a small sample. Nonetheless, we will be transparent. As we did with the last monitoring survey, we will publish the data, specify points to consider resulting from the survey and set out our planned response.

We have taken on board the comments from the TTDLS on making the objective less management speak and have re-worded to make it plainer. However, we do not agree that it is not the LSB's role to become too consumer focused. One of the central regulatory objectives in the Legal Services Act, and therefore a central role for us in implementing the Act, is protecting and promoting the interest of consumers. That is not to the exclusion of all other objectives, which we weigh equally in the balance, but it is an important focus.

On the tendering of services and seeking assurances from bidders on equality and diversity, we recognise there can be a danger in the process being over bureaucratic. However, in practice the LSB considers carefully all tender bids.

## Revised Objectives

20. Following comments from respondents we have redrafted the Equality Objectives as follows:

**Objective 1: Through our regulatory oversight role, encourage and work with the approved regulators to promote equality and diversity, including developing a diverse workforce across the legal sector at all levels by:**

- **Assessing regulators' implementation plans to gather and evaluate diversity data.**
- **Reviewing and monitoring the progress made by regulators in delivering their implementation plans.**
- **Continuing to engage with approved regulators and others on how best to enhance a more diverse workforce across the legal sector.**

**Objective 2: Ensure our decisions take account of all relevant equality and diversity information by:**

- **Factoring equalities and diversity elements into our research, whether on workforce or consumer issues.**
- **Undertaking Equality Analysis where appropriate when developing our programme and policies for consultation.**
- **Reviewing and developing our 'consumer toolkit', which helps us identify and analyse consumer groups and their needs, including, in particular consumers who might be vulnerable.**
- **Engaging with diversity groups and organisations.**
- **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.**

**Objective 3: To ensure that the LSB's own practices and policies, including its internal staff and external stakeholder engagement focus on equality and diversity issues, and are examples of the approach we promote to others. We will do this by:**

- **Ensuring that our publications are available in a variety of formats on request.**
- **Monitoring and publishing the diversity profile of our staff and responding to the results (bearing in mind the size of the organisation).**
- **When tendering for services, work with firms who can demonstrate that they have a commitment to equality and diversity.**

- **Applying recruitment processes that are in line with our Equality Duty.**

## Annex A: List of respondents to the consultation process

The Bar Council's Equality and Diversity Committee	BC
Bar Standards Board	BSB
Solicitors Regulation Authority	SRA
The Law Society	TLS
Manchester Law Society	MLS
Tunbridge Wells, Tonbridge and District Law Society Regulatory Committee	TTDLS
The Society of Black Lawyers	SBL