



Solicitors
Regulation
Authority

The Legal Services Board's Draft Equality Scheme

Response from the Solicitors Regulation Authority

March 2010

Legal Services Board consultation paper “Draft Equality Scheme”

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Introduction

1. The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society for England and Wales. We regulate individual solicitors, certain other lawyers and non lawyers with whom they practise, solicitors’ firms and staff.
2. We welcome the opportunity to comment on the Legal Services Board’s (LSB) draft equality scheme. We launched our Equality & Diversity Strategy in 2008 and during 2009 delivered the first full year of activity. Similarly to the LSB’s draft scheme, our Strategy aims to embed equality & diversity considerations in all that we do, both in terms of our employees and in terms of our regulatory activities.
3. We have reviewed the draft scheme and set out some comments below.

Statement on diversity

4. The LSB’s statement on diversity (as shown on page 5 of the consultation paper) refers to practical limitations on what can be achieved owing to the small size of the organisation. While we agree that it is important to be realistic about what can reasonably be achieved in pursuing equality & diversity initiatives, we think that the LSB’s statement defines its obligations narrowly – in fact its obligations are wide and the statement should clearly define how the LSB intends to progress both equality and diversity. The work of the approved regulators and their regulatory arms around equality and diversity will help supplement (and be supportive toward) the LSB’s efforts in this regard.
5. We note the LSB’s statement on page 5 of the consultation paper that it will *‘utilise all available talent in the workforce, regardless of background, to ensure that individual performance produces quality work...’*. We support this sentiment but recommend that reference is also made to the importance of driving forward diversity through the creative use of external agencies and consultants. For example, in previous consultations¹ the LSB has confirmed it may engage external advisers to support its consideration of applications, and it is essential that such advisers are able to demonstrate a clear understanding of, and commitment to, equality and diversity.

Equality and the Legal Services Act 2007

6. It is useful on page 8 of the consultation paper that the LSB has set out its interpretation of the Legal Services Act 2007’s regulatory objectives in relation to equality and diversity. The LSB rightly identifies here that the diversity of the legal profession itself impacts the ability of that profession to “...*best represent*

¹ *‘Designating new approved regulators and approving rule changes’*, LSB 2009

consumers and to make justice accessible to all.” However achieving a statistically diverse legal profession will not in itself ensure that consumers benefit, as the wider focus must surely be on ensuring that all legal professionals understand and embrace diversity and are suitably trained and equipped to deliver legal services effectively to the needs and personal circumstances of each individual consumer.

7. We believe that the LSB has a role here, in working with the approved regulators and their regulatory arms to not only ensure the legal profession is diverse and accessible, but that it is also able to translate this diversity into legal services capable of meeting the requirements of consumers and the diverse demographic qualities each person possesses.

What equality means to the LSB

8. At paragraph 5.1 of the consultation paper we agree that the LSB is correct to flag up the regulatory objective to ‘promote competition’; however, in doing so the LSB must be mindful that its duties extend beyond the regulatory objectives, and as such it would be helpful for the LSB to define how it intends to promote equality across its own objectives, particularly in terms of promoting the public interest and access to justice. For the latter, the LSB’s interpretation should be wider than looking just at barriers to entry, and should also look at barriers that can occur at any point during the career lifespan of legal services professionals. This could include barriers relating to career progression, retention, access to senior positions, and the transferability of skills between different sectors within the legal services industry. We recommend that a wider and more comprehensive definition is set out here to take into account the many other barriers that can impact the diversity of the profession and access to justice.
9. Paragraphs 5.2 and 5.3 of the consultation paper refer to the duties upon the LSB and other public authorities to tackle discrimination and promote equality of opportunity in the areas of disability, gender and race. Later in the paper at paragraph 7.4 the LSB confirms it will broaden its approach in due course (in-line with the incoming Equality Bill 2009) to consider the areas of age, gender identity, sexual orientation, and religion or belief.
10. We would recommend that the LSB’s equality scheme takes as broad an approach as possible, and is built squarely upon the understanding that it (and by proxy the approved regulators and regulatory arms sitting within the wider regulatory framework) should aim to promote equality and diversity for all individuals and groups. We do agree that the LSB would need to prioritise its resources in the areas that require most attention in relation to promoting and achieving equality, and as such it could set these priorities out clearly along with the reasons for setting those priorities. The equality scheme must address the LSB’s legal duties of course, but we believe this should not restrict the scope of the scheme. The Equality Bill 2009, although currently still in draft, will extend the current public duties on race, disability and gender to cover all 7 strands and it may be pertinent for the LSB to be proactive in addressing these within its scheme

11. As the oversight regulator the LSB's equality scheme should set the tone for progressing and embracing equality and diversity throughout the legal profession, and as such we believe it important for the scheme to cover all equality strands (and state explicitly that it does so) – that is race, disability, gender, gender identity, sexual orientation, age, religion or belief. The scheme ought also to state that its reach extends to other demographic factors such as social status and background, caring responsibilities, and income group.
12. We have built our own equality and diversity strategy to promote equality for all the strands, not just those for which there is currently a legal duty to do so. Members of the profession we regulate are expected to go further than meeting the statutory duties upon them as employers and service providers in embracing equality and diversity, as they are required through rule 6 of the Solicitors Code of Conduct 2007 to be responsive to all of the diversity strands referred to above. It seems important to us that the LSB's equality scheme sets a clear and strong message for all its stakeholders: namely, that truly addressing and embracing equality across the profession and amongst the regulatory bodies requires a far broader approach than simply aiming to meet the legislative minimum.

The LSB as an employer and an oversight regulator

13. The distinction on page 10 of the consultation paper between the LSB's dual roles as an employer and as an oversight regulator is useful, and we feel that the final version of the scheme should use this format.

The LSB as an oversight employer

14. Under paragraph 6.1 the LSB sets out a list of criteria to help shape its cultural development. Here it would be helpful to set out the LSB's vision for recruiting and retaining a talented and diverse workforce. This should include 'dignity at work', and the need to challenge and address inappropriate behaviour and inequality in the workplace. Changing culture and creating an environment that is free from harassment and discrimination, and where diverse talent is welcomed and nurtured, requires clear leadership. We would recommend that, in the section setting out the LSB's actions on employment, consideration is given toward integrating key equality and diversity competencies into the roles of the LSB's senior managers and senior staff, with progress being monitored as part of the organisation's performance management framework.
15. We note the LSB's decision to include a section on equality and diversity in all its Board papers during 2010, and we fully support this move. Each paper requiring consideration by the LSB's Board should provide evidence of any potential equality impact (both positive or negative) upon groups or individuals against all of the strands referred to above, and could usefully include information on how it intends to address any adverse impact. This would complement the LSB's work referred to on page 18 of the consultation paper in introducing a framework for producing equality impact assessments, which in itself must be a priority to support the LSB's policy development.

16. At paragraph 6.2.2 the LSB is right to state that *“each of our consultations is open to review and response from the public for a standard period of 12 weeks.”* It would be worth adding here a commitment to making reasonable adjustments required by individuals in being able to respond to consultations, and to confirm that alternative formats and languages can be provided upon request. It would also be helpful to have a section clearly setting out how the LSB engages and consults with the diverse regulated community, and with the public/consumers. The equality scheme could also confirm the role and responsibilities of its consumer panel in promoting equality and addressing any adverse impact.
17. We should also add that we believe the LSB must, as a public body serving both England and Wales, have a Welsh language scheme, and it would be useful for the equality scheme to refer to the availability of initiatives like this.

The LSB’s starting point

18. At paragraph 7.3.2 the LSB sets down its commitment to develop evidence regarding how consumers view quality within legal services. We feel that this approach should be widened to look more generally at the types of support and information consumers require initially in being able to even recognise quality, and could also refer to the commitment of the LSB and the approved regulators to support consumers as the legal landscape changes in-line with the advent of alternative business structures.
19. While the focus on diversity is valuable, we do not believe that this section wholly takes into account the concept of equality, which is of course fundamental to addressing barriers and inequality. We feel that the LSB should consider how it will promote equality, as focussing predominately on promoting diversity on its own may not be sufficient.

Actions for 2010/2011

20. Broadly we agree that the proposed actions set out on pages 19 – 22 of the consultation paper will help the LSB to deliver its equality scheme aims during 2010. Interestingly there are a number of actions that complement work already ongoing within the SRA, some of which we are already talking about with the LSB (such as the activity around quality assurance). We feel that the action plan needs to be set out to include key timescales and identify owners who will be responsible for taking the action forward.

**Solicitors Regulation Authority
March 2010**

