

Equality Impact Assessment Initial Screening – Relevance to Equality Duties

The EIA will identify likely impacts on:

- disability
- race
- sex
- gender reassignment
- age
- religion or belief
- sexual orientation
- caring responsibilities (referred to in the Equality Act 2010 as pregnancy and maternity)

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

Introduction of a regulatory requirement

The LSB proposes to introduce a regulatory requirement on law firms and barristers' chambers to gather and publish diversity data. In summary, our expectation is that approved regulators will:

- a) require firms or chambers to request their members/employees (lawyers and non-lawyers) to complete a diversity monitoring questionnaire which will cover the following characteristics: age, gender, ethnicity, disability, caring responsibilities (including pregnancy and maternity), religion or belief, sexual orientation and socio-economic background
- b) ensure published summary data is available about the workforce diversity profile of regulated entities (for example individual law firms or barristers chambers), based on the data received from the monitoring questionnaires (including the response rate and broken down by seniority). It is proposed that this applies initially to a smaller number of characteristics including age, gender, ethnicity, disability, caring responsibilities and socio-economic background.

2. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes	Outputs
<p>It is our view that in order to meet the regulatory objectives of the Legal Services Act 2007 (and in particular the objective to encourage an independent, strong, diverse and effective legal profession), approved regulators should:</p> <ul style="list-style-type: none"> • gather an evidence base about the composition of the workforce to inform targeted policy responses, • evaluate the effectiveness and impact of existing diversity initiatives, • promote transparency about workforce diversity at entity level as an incentive on owners/managers to take action 	<p>Our overall intended outcome is to break down barriers to entry, retention and progression to legal careers that occur for individuals with particular characteristics. We want to promote a legal workforce that is genuinely open to the widest pool of talent that closely reflects the makeup of the wider population in England and Wales.</p> <p>It is our view that this policy is a necessary first step in bringing diversity issues into the mainstream identifying specific issues for action and ensuring firms and chambers are held accountable for their progress.</p>	<p>The intended outputs include:</p> <ul style="list-style-type: none"> • a picture of the make-up of the legal profession as a whole across the protected characteristics plus socio-economic background, • a published summary on the website of each firms and chambers workforce broken down by each protected characteristic and level of seniority

3. What existing sources of information will you use to help you identify the likely equality impacts on different groups of people?

Research and Diversity Forum

Since the inaugural meeting of the LSB’s Diversity Forum of Professional Regulators and other bodies including representatives from the Ministry of Justice (MOJ), the Judicial Appointments Commission (JAC) and Equality and Human Rights Commission (EHRC) on 17 June 2009, we have been considering how best to work with approved regulators to achieve our shared regulatory objective of ‘encouraging an independent, strong, diverse and effective legal profession’ in the Legal Services Act 2007 (the 2007 Act) and meet our obligations under the public sector equality duty imposed by the Equality Act 2010 (the 2010 Act).

We have reviewed existing academic research, and commissioned and published a literature review and wholly new research. We have also engaged with a number of interest groups and academics working in the field.

This work has highlighted the following issues:

- the lack of comprehensive data on the make-up of the existing legal workforce across the full range of diversity strands, particularly at the level of individual firms or chambers
- while there is a significant investment of resources and effort in diversity initiatives, particularly at entry level, there is no systematic evaluation of their impact and effectiveness
- the statistics that are available in relation to the gender and ethnicity of solicitors and barristers at different levels of seniority illustrate that while the profession is relatively diverse at entry level in relation to these characteristics, the picture at the more senior levels is still one of white male dominance. This view is supported by qualitative studies¹. Therefore retention and progression for women and black and minority ethnic (BME) practitioners is a significant issue
- corporate consumers of legal services are increasingly demanding information about an organisation's performance in relation to equality and diversity and using this as a criterion for purchasing decisions.

Public consultation and stakeholder engagement

We have recently conducted a three month public consultation process on our proposals from 15 December 2010 to 9 March 2011. We received 26 written responses. Our policy proposals have been amended in light of the consultation responses, particularly around the publication of sensitive categories of information which include: sexual orientation and religion and belief.

We held a separate workshop with Diversity Interest Groups to discuss impacts on specific groups of people. We received advice from the Gender Identity Research and Education Society (GIREs) on the specific topic of measuring gender reassignment. Our policy proposals have been amended based on their advice and we will no longer require gender reassignment to be measured or published through this exercise (although this will be reviewed at a later date).

We met with a group of Diversity Managers from some City Firms to discuss our proposals and how they would work in practice as many of the participants to this session were already conducting a similar monitoring and publication exercise. The model questionnaire was amended in light of their advice.

Throughout the consultation period we have discussed and debated our proposals with the largest approved regulators (in terms of entities covered), the Bar Standards Board (BSB) and Solicitors Regulation Authority (SRA), as their regulated communities account for the vast majority of firms and chambers that

¹ See LSB website for further details on the relevant academic literature
http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/literature_review_on_diversity2.pdf

will be impacted by these proposals. We have also held a joint session with the BSB and SRA to discuss implementing our proposals.

We met the Crown Prosecution Service (CPS) to discuss work it had done on diversity monitoring with its panel advocates. We have also discussed our proposals with other regulators including the General Medical Council (GMC) to gain a perspective about what was being achieved comparatively in other sectors. Through our consultation process we also considered the diversity profiles of other sectors including architecture, veterinary medicine and accountancy as comparators.

4. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people? If so what are the gaps in the information and how and when do you plan to collect additional information?

In terms of the impact of our proposals on the legal profession as a whole, there is a clear lack of comprehensive data on the make-up of the existing legal workforce across the full range of diversity strands, particularly at the level of individual firms or chambers. It is our view that collecting an evidence base is the necessary first step in order to make evidence based interventions and policy decisions in the future. The existing gap in our knowledge of a current evidence base will be filled through our proposals.

We also acknowledge that there is a significant investment of resources and effort in diversity initiatives, particularly at entry level, but there is no systematic evaluation of their impact and effectiveness and a comprehensive quantitative evidence base is essential in making these types of assessments. We see our proposals as benefiting the work of the LSB, approved regulators, firms and chambers in providing targeted responses to diversity issues within the legal profession.

5. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a positive impact on any of these different groups of people and/or promote equality of opportunity?

Responses to our consultation indicated strong support from a wide range of respondents to the principle that a better evidence base is required about the diversity make-up of the legal services workforce. We note that a number of approved regulators already have plans in place to increase the range of data they collect and improve its reliability. We recognise that there are different ways in which this could be achieved – for example a regulatory requirement on firms to conduct surveys about the diversity of their workforce, or collection through the practising certificate renewal process and/or surveys. We have purposefully not sought to be prescriptive in our proposals about the approach approved regulators take to gathering a more comprehensive evidence base as it is fairer to adopt a proportionate approach which takes into account the different sizes of

the approved regulators, their regulated communities and their resource capabilities.

Our proposals have the potential to impact positively on equality through our transparency requirement for all groups. It is our view that transparency about diversity is important because it makes firms and chambers accountable for their decisions. It is within the power of the managers of firms and chambers to address the issues about retention and progression – they recruit, promote and retain the workforce and establish the culture of the profession.

We met the Black Solicitors Network (BSN) to how the transparency requirement for firms and chambers who participate in their Diversity League Table (DLT) has positively impacted on diversity and equality in the profession. They indicated that:

- “Participants in the DLT are able to openly benchmark against their own initial position and also see how they compare against their peers. Being able to do this makes it much easier to see what they need to do to improve a situation. Transparency of diversity data helps to facilitate this and league tables make it easier for managers to be able to quickly compare and therefore respond”
- “Feedback has indicated that the reporting on “actions” i.e. Policy & Practices has also provided an excellent opportunity for managers within participating firms and chambers to use the report to lobby for additional resources to support the development and introduction of diversity and inclusion initiatives”
- “Transparency, as it relates to the Diversity League Table, requires a more fearless approach to equality and diversity. The public, consumers and importantly, procurers of legal services can all see what one is doing and how one is performing. Those who take part show a fearless and admirable commitment to bringing about change”.

We envisage a more effective and targeted response to issues of equality and diversity through our proposals as approved regulators, firms and chambers to use the comprehensive evidence base to evaluate the impact of their current initiatives and identify gaps or areas for action.

6. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

It is our view that these proposals are a necessary first step in bringing diversity issues into the mainstream and ensuring firms and chambers are held accountable for their progress.

We envisage that once approved regulators have a more comprehensive evidence base and the transparency requirements at entity level are in place, they (and we) can consider what further action is necessary and proportionate to improve the performance of the entities that they regulate in relation to increasing

diversity and social mobility.

7. Is there any evidence that proposed changes will have an adverse equality impact on any of these different groups of people?

The proposed regulatory requirements are likely to have a small impact for entities, and we acknowledge that small firms and chambers may need extra guidance and support from approved regulators. We support the suggestions made by consultees during our consultation process to minimise the impact on entities. These included approved regulators providing spreadsheet based tools to help support the collation of data and to standardise the reporting arrangements across firms and chambers.

The LSB recommends that the data is collected annually to ensure a full data set in the first five years of this regulatory requirement. We will continue to discuss the practicalities of achieving this with any approved regulators which consider that concessions may be needed, in order to explore why an alternative collection and reporting period is considered appropriate for their regulated community.

It is possible that individuals might be discriminated against on the basis of this published data, either by their employer, colleagues or consumers. It is our view and the view of the respondents to our consultation that extra safeguards are needed to protect the anonymity of individuals who fall into categories that contain sensitive information, which include sexual orientation and religion and belief. These safeguards include the removal of the requirement to publish data on sexual orientation at entity level in order to mitigate the risk of an individual possibly being 'outed' at work. Religion and belief will also be removed from the publication requirement at entity level to ensure the prevention of discrimination of an individual that belongs to a particular religious group.

As previously mentioned under question 3, we have taken the advice of GIRES to remove the requirement to collect and publish information on gender reassignment at entity level through this exercise as a separate, targeted, qualitative exercise has been recommended as more appropriate.

We also recognise that the voluntary nature of the data collection exercise, coupled with the publication requirement, may have the effect of limiting the data disclosed. This may mean that the evidence base gathered is incomplete and/or skewed by the reluctance of some individuals to disclose some or all of the data sought. While this is clearly a risk, our view is that data collection on such a basis would still represent a major improvement on the status quo. Moreover, the principle of transparency should be our initial priority. If we can achieve transparency at entity level, it is likely that over time individuals will become more accepting of the value of diversity monitoring (transparency will mean entities are likely to take action, which will emphasise that monitoring is effective). As attitudes change over time, it is likely that more individuals will be willing to disclose the data and its reliability will increase.

8. Is there any evidence that the proposed changes have no equality impacts?

Assessment of Impact

The policy impacts of our proposals on equality and diversity are expected to be positive in terms of providing a comprehensive evidence base on which the LSB can base future policy decisions and approved regulators to evaluate the effectiveness of existing diversity initiatives and identify gaps or areas for action. The transparency requirement is also expected to make firms and chambers accountable for their decisions, as it is within the power of the managers of firms and chambers to address the issues about retention and progression (as they recruit, promote and retain the workforce and establish the culture of the profession).

Gender identity

The impact of these proposals will not affect this group as we have recommended that data is not collected or published on gender reassignment within our proposals but as part of a separate and more targeted exercise by approved regulators, firms and chambers.

Gender

The impact for women is expected to be positive as a more comprehensive evidence base will be collected on the make-up of the profession in terms of women from entry to senior levels. The proposals could further inform our existing knowledge on barriers to entry and progression by women through their careers and has the potential to action change by firms, chambers and approved regulators.

Race

The impact for BME groups is expected to be positive as a more comprehensive database on ethnicity at different levels of the profession will be publically available. The proposals could further inform our existing knowledge on barriers to entry and progression experienced by BME groups and has the potential action change by firms, chambers and approved regulators. Over time we hope that it will be possible to explore the different experiences of different BME groups.

Disability

The impact on those with disabilities is expected to be positive as a more comprehensive data base on those with disabilities will be publically available. It may also help firms, chambers and approved regulators to target their diversity initiatives to areas where there are gaps in information or which require further work.

Religion and Beliefs

The impact for those of different religions or beliefs is expected to be positive due to a more comprehensive evidence base made publically available. We have ensured safeguards for the protection and anonymity of individuals from discrimination from discrimination through not requiring this information to be published at entity level.

Age

There is unlikely to be any equality impact on those of all ages as previous research and evidence has suggested that age is not an identified barrier to the different stages of a lawyer's career. This may be further investigated by approved regulators, firms and chambers once a comprehensive evidence base has been identified.

Sexual Orientation

The impact of those who are lesbian, gay or bisexual is expected to be positive as a comprehensive evidence base will be collated and aggregated by approved regulators. The firms, chambers and approved regulators may use this information to focus their efforts and policies toward encouraging a more diverse profession through focussed initiatives aimed at lesbian, gay and bi-sexual members of their workforce. We have ensured safeguards for the protection and anonymity of individuals by not requiring the publication of this information at entity level.

Caring responsibilities

The impact for those with caring responsibilities is expected to be positive as a comprehensive base will be made publically available. The proposals could further inform our existing knowledge on barriers to entry and progression particularly by those who have caring responsibilities for children and potentially action change by firms, chambers and approved regulators.

This characteristic is of particular relevance to the issue of progression and retention of women in the legal profession who choose to take time out of their careers to have a family, as recent and past research has shown that women taking time out of their career to have a family is one of the barriers to achieving higher levels of seniority within a firm.²

We are also encouraging approved regulators to investigate the issue of pregnancy and maternity in greater detail as a part of their existing diversity work programmes. In particular the impact on women's career progression within the legal profession would benefit from further targeted and qualitative research. We will recommend that approved regulators ensure this work is encompassed in their existing research and equality and diversity work programmes.

Socio-economic background

The impact on those from a wide range of socio-economic backgrounds is expected to be positive as a comprehensive evidence base will be made publically available. The proposals could further inform our existing knowledge on barriers to entry and progression particularly by those who come from lower socio-economic groups or are the first generation of their family to attend a university and may potentially action change by firms, chambers and approved regulators.

Although the requirement for the socio-economic duty has been removed from

² For example Law Society (2010) *Obstacles and Barriers to the career development of woman solicitors*, <http://www.lawsociety.org.uk/secure/file/189203/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/Female%20lawyers.pdf>

the Equality Act 2010, social mobility remains a high priority for the LSB, approved regulators and the government, and work is on-going to address the recommendations of the Milburn Panel on Fair Access to the Professions and has particular relevance to the legal profession in terms of barriers to entry and progression.

Summary

The proposals are expected to impact positively on the protected characteristics, except gender reassignment and age which are expected to have no impact or not adverse impact. In order to mitigate any negative impact on certain groups, the necessary safeguards have been put in place to protect the anonymity of individuals who fall into sensitive categories of sexual orientation and religion or belief, by not requiring information to be published at the entity level.

9. Is a full Equality Impact Assessment Required? No

We will revisit the EIA – initial assessment after January 2012 when approved regulators are required to submit to the LSB their plans on how they will implement our proposals. We would expect an EIA to be conducted by each approved regulators which will be tailored to their methodology adopted to achieve our expectations.

We do not anticipate that there is an adverse equality impact on any minority group as a result of the proposals. We do not, therefore, envisage a need for a full EIA at this stage, but should the evidence from approved regulators plans submitted in January 2012 convince us that one is required; a full EIA will be conducted.

10. Monitoring and review the proposed changes post-implementation

We plan to review our proposals in January 2012 once approved regulators have submitted their plans and we will make a recommendation to the LSB Board for amendments to the proposals, if appropriate.

We will monitor our proposals in December 2012 when data from regulators on the evidence base is expected to be available.

We will conduct an evaluation of our proposals in December 2012 and on an annual basis thereafter to review the impact on any minority group and monitor the impact of the proposals on trends in diversity across the profession.

11. Summary and conclusions

This Equality Impact Assessment relates to the introduction of a regulatory requirement for approved regulators to compel firms and chambers to ask individuals employed with their entity to complete a model questionnaire covering

the protected characteristics (excluding gender reassignment) plus socio-economic status, and ensure a summary of each firm and chamber is published on their individual websites.

This initial screening focused on the potential impacts both positive and negative on the protected characteristics and individual groups. Where appropriate we have introduced safeguards for individual anonymity in terms of sensitive categories including sexual orientation and religion or belief.

We expect approved regulators in their plans submitted to the LSB in January 2012 on how they will implement this regulatory requirement to include an EIA which has been tailored to their specific methodologies adopted. We also expect the approved regulators to conduct an EIA to identify any negative impacts from the regulatory requirement on any minority group including small firms and chambers within their regulated community. An EIA is necessary at the approved regulator level as each plan will be tailored to each approved regulators regulated community and may have different impacts on different groups depending on the methods they choose to adopt.