



THE HONOURABLE SOCIETY OF THE INNER TEMPLE
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Submission to the Legal Services Board

**Increasing Diversity and Social Mobility in the Legal Workforce:
Transparency and Evidence**

Introduction

The Honourable Society of the Inner Temple is pleased to respond to the Legal Services Board Consultation on Increasing Diversity and Social Mobility in the Legal Workforce: Transparency and Evidence.

The Inner Temple is one of the four barrister Inns of Court. The Inns continue to play an essential role in recruitment, admission and education and training for the Bar. The Inn is **working hard to ensure that the Bar is well placed to flourish in the future** and has made significant strides to ensure that its membership is diverse and socially representative. The Inner Temple has strengthened its data collection and statistical analysis in order to **monitor and evaluate equality and diversity, trends relating to professional profession and the effectiveness of its initiatives in this area.**

The Inner Temple welcomes the Legal Services Board's focus on promoting social mobility and diversity in the legal workforce and the Inn is committed to doing so. It is our belief that the collection of evidence, both in terms of data and through the coordination of research, is essential towards this aim. We are, however, **concerned by the recommendation on publication of all protected characteristics and socio-economic background at the firms and chambers level.** We are not persuaded that this is productive for a number of protected characteristics. It is also felt that questioning in this way will lead to a substantial non-response ('prefer not to say') and under-declaration (for example 'no disability' in relation to long-term health issues) by individuals, presenting an inaccurate picture of the legal workforce that could prove counter-productive to equality and diversity initiatives.

Collecting and publishing data on firms and chambers appears to be trying to meet two separate aims. On the one hand, these proposals endeavour to improve the evidence base and build a better picture of diversity across the sector. If this is the main aim, presumably aggregate data would suffice. The proposal is also, however, meant to "enable firms and chambers to demonstrate their competitive edged based on culture and ethos that values diversity" (4) and will presumably therefore "encourage more firms and chambers to take action to deliver diversity" (3) because of "peer pressure" (19). **The model questionnaire presented in this consultation is inadequate to meet the second aim.** It will not allow for comparison of similar firms or chambers due to the differences that exist between the branches of the legal professions. Due to the substantial non-response rate that can be expected on sensitive data by individuals at this micro-level, it will further this inability for pertinent cross-comparison and analysis.

We would recommend that a **comprehensive listing of programmes that promote social mobility and diversity across the legal professions be collected regularly**. The Inn was pleased to respond to the Legal Services Board's Questionnaire on Diversity Initiatives and believes that this should form a component of the information collected, rather than characteristic data by chambers or firms alone. This would be a more useful tool for incentivising a culture of diversity and social mobility across the sector.

Responses

- **Question 1:** What are your views on our assessment of what diversity data is currently collected? Are there any other sources of data that we should be aware of?

The Inns of Court are the first point of call for all prospective barristers. The Inner Temple collects data from the point at which a prospective member is met through to joining the Inn, pupillage, practitioner stage and beyond. We therefore collect and monitor professional progression on a large array of characteristics, including many of those listed in this consultation. An example of our equality and diversity monitoring form to incoming students is attached (Annex A). **The Inn will continue to build on this data in order to inform recruitment procedures and to monitor equality and diversity.**

The Inner Temple supports the publication of Inn-wide and profession-wide data on certain protected characteristics. The Inner Temple already collects equality & diversity data on its entrants and pupils and publishes this through its 'Opening Doors' publication and in its careers information.

The Bar Standards Board has recently consulted on, among others, the collection of data on a number of protected characteristics. We believe it would be worthwhile to assess the data received from this possible collection mechanism in order to inform any further recommendations by the Legal Services Board.

- **Question 2:** What are your views on our assessment of what the available diversity data tells us?

We are concerned that context is not reflected in the analysis of progression of some groups in the legal workforce. Looking solely at the senior-end of any profession does not take into account the substantial transformations that have occurred across England and Wales, particularly in terms of entry into higher education. A more accurate picture would be demonstrated by cohort studies comparing entrants to those who had progressed to senior positions in the professions.

- **Question 3:** Is there other diversity research we should be aware of, that we did not take account of in our review of existing literature?

There is substantial research in relation to early intervention and social mobility that is not reflected in this review. For example, work by Professor Leon Feinstein¹ and Dr Jo Blanden² on the importance of working much earlier in the education system to promote social mobility.

¹ Feinstein, Leon (2004): "Mobility in Pupils' Cognitive Attainment During School Life", Oxford Review of Economic Policy.

² Blanden, J. P. Gregg and L. Macmillan (2007) 'Accounting for Intergenerational Income Persistence: Noncognitive Skills, Ability and Education' *Economic Journal*, 117, C43-C60.

For this reason, the Inner Temple launched a Schools Project in 2008, working with the National Education Trust, Pathways to Law and the Social Mobility Foundation to promote an understanding of the legal professions at school stage. The Inner Temple Schools Project aims to ensure that all students, regardless of their background, are aware of the opportunities available to them and to raise aspirations to the professions.

- **Question 4:** Are there any other existing diversity initiatives run by approved regulators which are not reflected in our outline of current initiatives?

The Inn acknowledges that the Legal Services Board has only focused on the work of the approved regulators. We do not feel that this portrays the extent of work being undertaken across the sector. **The Inns of Court, Specialist Bar Associations and Circuits as well as chambers undertake a substantial amount of work in this area that is not fully reflected in this review.** This is equally the case for solicitors' associations and firms. It is important to demonstrate the range of projects that exist across the entire legal profession. **It would be valuable to explore this broader commitment that exists at all levels.**

- **Question 5:** What are your views on the immediate priorities for 2011 we have identified?

We broadly agree with the first two priorities for gathering an evidence base and evaluating the effectiveness of current initiatives to promote diversity and social mobility. We have already stated, however, that we do not feel the monitoring mechanism proposed by this consultation will produce accurate data. Our view on evaluating diversity initiatives is covered in response to question 8.

Diversity and social mobility is a process rather than a goalpost. As such, any mechanism that the Legal Services Board wishes to implement **should be focused on fostering a culture that values these ideals.** The Inn does not believe that publication in this way – on chambers level of all protected characteristics without any staged implementation – would do so. As we argue in relation to socio-economic background in response to question 30, the more appropriate place to monitor trends is in terms of entry to the profession.

- **Question 6:** Do you agree that a more comprehensive evidence base is needed about the diversity make-up of the legal workforce.

We agree that a more comprehensive base of evidence is essential in order to monitor diversity and social mobility. Over time, aggregate data can provide useful insight into areas that need further analysis.

- **Question 7:** What are your views on our proposal that in principle approved regulators should impose regulatory requirements on the entities they regulate, requiring them to publish data about the diversity make-up of their workforce?

As previously noted, the Inn has strong concerns about the publication of data on a firm and chambers level. We feel that this will lead to a substantial non-response and under-reporting rate by individuals, which would be misleading and counter-productive. A firm or chambers' commitment to diversity and social mobility are more accurately demonstrated through their internal policies and procedures as well as the initiatives they undertake, rather than by their characteristic make-up alone.

While we broadly agree that "imposing regulatory requirements and highlighting the moral case for increasing diversity are two levers for change" (3), it must be noted that **publishing information on all protected characteristics at this micro-level would not necessarily foster this culture**. In fact, it could do quite the opposite if it was felt that this was a 'tick-box' exercise alone and, moreover, could lead to discrimination if sensitive information was not properly anonymised, particularly where small sets of chambers or firms are concerned. While we believe that there are some protected characteristics that approved regulators may wish to collect and publish, others are problematic and would not add to the qualitative research projects that are already being undertaken by the sector.

Equally, it is important to recognise and advertise the **business case for committing to diversity and social mobility**. We would support the Legal Services Board undertaking research in this area.

- **Question 8:** What form should the evaluation of existing initiatives take? Should there be a standard evaluation framework to enable comparison between initiatives?

Evaluation frameworks can be useful when analysing 'like for like' programmes and initiatives. Due to the important differences that exist between the professions, we are not certain that a standard evaluation framework would enable useful comparison or help to analyse the impact of those initiatives effectively. We believe it is up to the institutions themselves to assess the usefulness and cost-effectiveness of their projects.

- **Question 9:** What are your views on our position that regulatory requirements on entities to take specific action to improve performance (including targets) are not appropriate at this stage?

We agree with the determination that targets are wholly inappropriate at the firm and chambers level. Any potential future regulatory requirement in this area would need to be carefully considered.

- **Question 10:** Do you think we should issue statutory guidance to approved regulators about diversity data collection and transparency?

No comment.

- **Question 11:** What are your views on our proposal to agree standard data categories with approved regulators, to ensure comparability of diversity data within the legal workforce and with other external datasets?

While some standardised categories are important to provide broad comparisons across the legal workforce, it is equally if not more important to enable comparison within the branches of the legal profession. **A questionnaire that is too generalised will not necessarily allow for useful comparison between similar chambers or firms.**

- **Question 12:** Do you have any comments about our proposals in relation to the individuals the data collection and transparency requirements should cover?

More guidance is needed as to who would be required to complete the survey. For example whether every administrative, clerical and other support position within chambers or firms would be subject to it.

- **Question 13:** Should the framework include the collection of information on in-house lawyers?

The Inn holds that the same policy should apply to small chambers as in-house lawyers. In-house ('employed') barristers and sole practitioners must adhere with the Code of Conduct, including those relating to equality and diversity. If these professionals are to be excluded as the consultation document proposes, we believe that aggregate data should still be produced to provide this important picture of diversity.

Please see response to question 15 for our views on publication of aggregate data.

- **Question 14:** What impact do you consider these new regulatory requirements will have on regulated entities?

No comment.

- **Question 15:** What are your views on our proposal that in general firms and chambers should be required to collect data from their workforce annually, while smaller firms and chambers should only be required to collect the data every three years?

The consultation document states: "*We are not persuaded that there ought to be a complete exemption in relation to small firms or chambers ... the current proposal is just to build a picture of the nature and depth of the issues and in our view will impose only a minimal additional regulatory burden*" (27).

While we appreciate that the Legal Services Board has explained their position with regards to smaller firms and chambers, **there is an important differentiation between collection and publication of data.** We do not agree with publication requirements for small firms and chambers. We are, however, supportive of data on certain protected characteristics being *collected*. If their data is then required to be published, we would argue that this should be done on an aggregate level. As chambers, unlike many firms, have low turnover rates, this is also likely to provide a more systematic picture of the profession and changes to it.

The Legal Services Board acknowledges that individual non-responses or under-reporting will be expected by requiring sensitive personal information. This will be especially the case for small firms and chambers where releasing sensitive data could lead to identification. **We do not feel that a large percentage of under-reporting is beneficial to either statistical transparency or for effective comparison of data.** A substantial rate of under-declaration will not only undermine survey results but would also lead to a misrepresentation of the profession to external audiences. It would be worrisome if a questionnaire meant to promote equality and diversity has the opposite effect in deterring entrants from non-traditional backgrounds due to skewed data.

- **Question 16:** What are your views on our proposal that data should be collected about all the protected characteristics listed above, plus socio-economic background? If not, on what basis can the exclusion of one or more these characteristics be justified?

Public bodies are required to give ‘due regard’ to eliminating discrimination and promoting equality in relation to protected characteristics as defined by the Equality Act 2010. Given the research that is already undertaken, **we are not persuaded of the need for annual reporting on sexual identity, religion or belief and gender reassignment on the chambers or firm level.**

With regards to sexual identity in particular, a recent report by the Equality and Human Rights Commission noted that, “evidence suggests that a key concern for LGB people is confidentiality ... some LGB people believe their sexual orientation to be a private matter and do not understand the reasons for asking the question”³ (14-15). We believe that this applies to the current consultation and the inclusion of this category needs careful consideration.

- **Question 17:** Do you think that data should be collected anonymously or enable individuals to be identified (please explain the reason for your answer)?

We believe that it is essential that data supplied remains confidential and is provided anonymously given the sensitive nature of some of the categories listed. This would be difficult for small sets of firms and chambers.

- **Question 18:** Is there a way of integrating data collection with the practising certificate renewal process that still achieves our objective of transparency at entity level?

No comment.

- **Question 19:** Do you have any suggestions on how to improve the model questionnaire?

We do not believe that category 2C (as stimulated in response to question 21) or category 2D relate well to the Bar or chambers. As self-employed practitioners, a definition of what constitutes ‘supervisor’ would be necessary.

Category 4 (‘Sex’) should be reworded to ‘Gender’, as explained in response to question 28 with regards to eliminating the category on gender reassignment.

We have concerns in relation to asking for specific details of disabilities in category 6, as noted in response to question 24.

In relation to socio-economic background in category 10, individuals often attend different types of schools between the ages of 11-16 and 16-18. This should be further clarified.

Under category 11 (caring responsibilities), we do not believe that specifying hours for further caring responsibilities is necessary, as related in response to question 29.

- **Question 20:** What are your views on the proposed categorisation of status in the model questionnaire?

The Inn presumes that pupils in chambers and those on training contracts in solicitors firms have been exempted from completing this questionnaire as they do not feature in the status listing. This should also feature under responses to question 12.

³ Botcherby, S. and Creegan, C. (2009) Moving forward: Putting sexual orientation in the public domain. Manchester: Equality and Human. Rights Commission. Pp 14-15.

We believe that ‘paralegal’ would be another useful category to include under 1(B).

- **Question 21:** What are your views on the proposed questions about job role as set out in the model questionnaire? Do you have suggestions about additional/better measures of seniority? Do you have suggestions on a category of measure to encompass a non-partner senior member of staff i.e. CEO who holds an influential or key role in decision-making of an organisation?

This question is not suitable for the Bar in its current form. Self-employed barristers in chambers do not employ one another, nor do they have roles with responsibility over performance management or salary reviews for other tenants. Therefore, this question says little and can easily be misinterpreted.

We would argue that the number of years practising would be a better indicator. We also believe that, while it might not provide a measure that is comparable across all legal professions, the categorisation of Queen’s Counsel (QC) would be usefully included in order to compare like sets of chambers.

The current question 2C does not capture seniority within chambers. In many chambers the management committee does not necessarily equate to professional seniority, as many are formed of a range of members for representative purposes.

- **Question 22:** Do you have any suggestions about how to measure seniority in the context of an ABS?

No comment.

- **Question 23:** Should we collect any additional information, such as that suggested in paragraph 129?

We assume that size and type of firm as well as areas of practice would be covered through collection mechanisms. It should be noted that this would be more difficult for mixed practices and practitioners.

Nationality would also be of interest.

- **Question 24:** Do you have any views on our proposed approach to collecting data on disability?

We do not believe that further specified categories of disability should be published. We are concerned by potential prejudice against those with mental health conditions, learning disabilities and long-standing health conditions, among others. At this stage, we would suggest a removal of section 6(B) or an assurance that these categories would not be subsequently publicly reported.

- **Question 25:** What are your views on our proposed approach to collecting data on sexual identity?

Please see response to question 16.

- **Question 26:** Do you think we should follow the Census approach to collecting data on religion and belief? If not, what alternative approach do you suggest?

No comment.

- **Question 27:** Do you think a question should be included in the model questionnaire about gender reassignment? If not, what other means should be used to build an evidence base in relation to gender reassignment issues in the legal workforce?

We believe that targeted qualitative research is more appropriate in this instance.

- **Question 28:** If a question is included on gender reassignment, do you agree with our proposed question?

We believe the 'Sex' category could be changed to 'Gender', which would allow respondents to list the gender to which they identify.

- **Question 29:** What are your views on our proposed approach to include a question on caring responsibilities?

We are unclear as to why hours spent on additional caring responsibilities – in particular those for friends or neighbours – is required.

- **Question 30:** What are your views on our proposed approach to measuring socio-economic background?

The Inn is supportive of collecting useful data on socio-economic background in the profession. As noted, the Bar Standards Board already requests this information from Bar Professional Training Course entrants. We feel that this is a suitable site by which to request this information as it will better allow for assessment of entry and progression through the profession.

- **Question 31:** Do you have any comments about our proposed approach to publication requirements?

As we have argued throughout this response, we do not feel that publication of all characteristics at the firms and chambers level would provide useful data, promote a culture that values diversity and social mobility or represent the commitment that exists to these principles across the sector.

- **Question 32:** Do you have any views on special arrangements that should be considered for firms and chambers of all sizes when publicising sensitive information at different levels of seniority?

We support the exemption of small chambers and firms from separate publication. If required, their data should be collected and aggregated across the branches of the legal professions before publication. Safeguards would be needed to protect sensitive information.

- **Question 33:** What are the main impacts likely to be on approved regulators when implementing this framework?

No comment.

INN'S EQUAL OPPORTUNITIES MONITORING QUESTIONNAIRE

In line with the Inns' Equal Opportunities Policy and Code, the Inns collect ethnic origin and gender information from all applicants for Inn membership so that the effectiveness of the Policy and Code can be assessed.

The ethnic origin categories are those used in the 2001 census and are recommended by the Bar Council. The information collected will be treated as confidential. Information obtained will be used to draw up an anonymised analysis so that the Inn and the Bar Council/Bar Standards Board can monitor access to the profession, progression into practice and drop-out rates in accordance with its legislative duties and good equal opportunities practice. Please refer to our Subject Information Statement for further information on how we will protect your data. The data collected will not be used in any selection process and is kept only for monitoring purposes.

1) What is your ethnic group?

Choose one section from (a) to (f) then tick the appropriate box to indicate your cultural background.

a) White

- British []
- Irish []
- Any other White background *please write in below* []

.....

b) Mixed

- White and Black Caribbean []
- White and Black African []
- White and Asian []
- Any other mixed background *please write in below* []

.....

c) Asian or Asian British

- Indian []
- Pakistani []
- Bangladeshi []
- Any other Asian background *please write in below* []

.....

d) Black or Black British

- Caribbean []
- African []
- Any other Black background *please write in below* []

.....

e) Chinese or other ethnic group

- Chinese []
- Any other *please write in below* []

.....

f) Unwilling to supply []

2) Please indicate whether you are (tick box as appropriate) Male [] Female []

3) Do you intend to practise at the Bar of England and Wales? Yes [] No []

4) What is your nationality?

5) What is your age?

- under 25 [] 25-34 []
- 35-44 [] 45-54 []
- 55-64 [] 65+ []

6) Do you consider yourself to have a disability?

The Disability Discrimination Act defines a person as having a disability if he or she 'has a physical or mental impairment, which has a substantial long-term adverse effect on your ability to carry out normal day-to-day activities'. Long term means 12 months or more.

Yes [] No []

If yes, please specify the nature of the disability.....

.....

7) What is your sexual orientation?

- Bisexual []
- Gay Man []
- Gay Woman/Lesbian []
- Heterosexual/Straight []
- Other []
- Prefer not to say []

8) Please indicate your religion or belief:

- None []
- Buddhist []
- Christian []
- Hindu []
- Jewish []
- Muslim []
- Sikh []
- Agnostic []
- Other []

9) What was the job of the highest earner of your parents'/guardians' household (if unemployed then last job held) or your last job if you came to the Bar after a previous career?

Job title: (e.g. Lecturer).....

Nature of business:.....

(e.g. Higher Education, University)

Employment Status.....

(Please select one from the following five choices: employer, self-employed (with no employees), manager, supervisor or other employee)

10) Which best describes the school you attended between the ages of 11-18?

- State – maintained (incl. comprehensive, community, voluntary) []
- State – specialist []
- State – grammar / selective []
- State – academies []

- State – further education college []
- State – other []
- Independent – selective fee-paying []
- Independent – non-selective fee-paying []
- Independent – other []

11) If applicable, please supply the most recent postcode for your parent's/family primary home.....

I have read, understood and consent to the use of my data for the purposes set out in the subject information statement.

Signed.....

Dated.....