

Encouraging a diverse profession

Consultation on revised guidance for regulators on encouraging a diverse profession

This consultation will close on 2 December 2016.

Contents

Preface	1
Introduction	3
The current expectations and guidance	4
Expectations	4
Guidance on data collection and publication	4
Reviewing the 2011 guidance.....	5
Proposed changes.....	6
Consultation questions.....	7
Next steps.....	8
How to respond.....	8
Annex A	9

Preface

The Legal Services Board (LSB) shares with the regulators a regulatory objective to encourage an independent, strong, diverse and effective legal profession. Delivery of the regulatory objectives in the Legal Services Act 2007 (the Act) requires a diverse profession which reflects the society that it serves – one that understands and can respond to the differing needs of a disparate range of clients. A diverse legal profession will better lend itself to innovation, and better meet consumers' legal needs and limit wasted talent.

In 2011 we demonstrated our commitment to this issue through publication of statutory guidance to regulators on data collection about the diversity of the legal workforce.¹ We know that firms and representative bodies share this commitment, recognising the business and wider benefits of a diverse profession. Many have introduced initiatives to allow the widest possible talent pool to access legal careers at all levels in the sector.

We remain determined to continue our leadership in delivering this objective. Our key focus is to ensure that regulation supports measures to improve diversity in the profession. When we published our guidance in 2011, we said we would regularly review the progress being made and identify what further measures we can take to support diversity initiatives. In our recent Market Evaluation, we found that there has been some progress in increasing the diversity of the profession.² Entry to the profession, when compared to the population of England and Wales was broadly comparable. However, at more senior levels in the profession results were not as positive and the sector remains disproportionately male, particularly at senior levels. There is a long way to go before we can be confident that careers in law at all levels are open to all.

In light of recent reports, we are seeking views on proposals to update our statutory guidance to the regulators. We have not changed our view on the scope of diversity and it remains as reflected in our initial guidance:

- age
- gender
- disability
- ethnic group
- religion or belief
- sexual orientation
- socio-economic background
- caring responsibilities.³

¹ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf

² <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report.pdf>

³ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf

In reviewing and updating our guidance, we are demonstrating our ongoing commitment to a diverse legal profession. The revisions we propose in this consultation are focused on consolidating and building on regulators' work to date. While the starting point must be to continue gathering evidence to make a proper assessment of the key issues, it is important that this data is analysed and used as an evidence base to take action where it is needed – by firms, by representative bodies and by regulators.

Introduction

1. The Legal Services Board (the LSB or the Board) is one of the organisations created by the Legal Services Act 2007 (the Act) and is responsible for overseeing legal regulators, (referred to as the approved regulators in the Act) in England and Wales. The LSB's mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. The Act requires the LSB and the approved regulators to act compatibly with the same regulatory objectives and a requirement to have regard to the better regulation principles.
2. This is a consultation paper seeking views on the LSB's proposals to update its section 162 guidance for regulators on diversity. The current guidance was issued in 2011 and recent LSB work in this area has shown that, while remaining an important topic for legal services regulators, the specific details and approach of the 2011 guidance require a review.
3. The 2011 diversity guidance is narrowly focused on data collection. This was to create the evidence base required to carry out assessments on where the issues were and measure the impact of initiatives to address these over time. Since the guidance was issued, the extent to which the regulators have used the information collected has differed greatly varying from merely applying the guidance and collecting data in its simplest form to more comprehensive implementation of policies and processes based on this data. The prescriptive approach taken in 2011 has delivered a degree of progress as shown in a recent LSB report, but in order to achieve further improvements the guidance requires updating.⁴
4. The relevant regulatory objective in the Legal Services Act 2007 is "encouraging an independent, strong, diverse and effective profession", and this objective is in addition to the Public Sector Equality Duty that also applies to each regulator.⁵ In our view, these statutory duties mean that simply collecting data is not enough. The discussions we have had with the regulators shows that the view we take in our guidance is a key factor in terms of what they do in this area. If regulators are to further develop their work in this area, our guidance should also develop and describe, in an outcomes-focused way, what regulators may do that demonstrates they are "encouraging a diverse profession".
5. The regulatory objectives are drafted in such a way that there is always going to be room to improve how they are delivered. With respect to the issue of diversity

⁴ http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/pdf/20160525_Diversity_And_The_Legal_Services_Regulators.pdf

⁵ [Regulatory Objectives](#)

[Public Sector Equality Duty](#): public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. It also requires that public bodies have due regard to the need to: eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities.

this is particular easy to see, given that across a number of different characteristics there are under-represented groups in the legal service workforce. At present, data suggests some improvement has been seen for some characteristics in terms of entry to the profession, but indicators for career progression suggest the sector is performing less well. Further work is needed by regulators and the sector itself to improve this situation, and it cannot stop at achieving the data collection criteria in the 2011 guidance.

The current expectations and guidance

Expectations

6. The explicit expectations the Board set out for regulators in the 2011 decision document are to:
 - Gather a more comprehensive evidence base about the diversity characteristics of the legal workforce by ensuring that every individual is given an opportunity to self-classify against a broader range of characteristics
 - Ensure the transparency of diversity data, including published summary data about some characteristics at the level of individual regulated entities
 - Collate diversity data to give an aggregate view of the diversity make-up of each branch of the profession
 - Ensure the data identifies seniority where appropriate, so that it can be used to track progress in relation to retention and progression
 - Evaluate the effectiveness and impact of existing diversity initiatives.
7. The 2011 guidance suggests regulators encourage firms to collect data on certain characteristics, and to encourage providers to use the questionnaire contained in the guidance.
8. All regulators must also develop a sound reasoning (with evidence) to justify a departure from the suggested approach. This justification must also take account of the regulatory objectives and be in accordance with the better regulation principles.

Guidance on data collection and publication

9. The current guidance is largely input focused, and gives the regulators the responsibility to collect data on the diversity profile of their own professions. The guidance strongly encourages the regulators to use a model questionnaire to ensure data is comparable across the entire profession as well as under each individual regulator. The guidance also offers lines on how regulators should collect the data for any regulated entities, as well as specifying the need for regulators to justify to the LSB why they may have departed from recommended approach in the document, explaining how the expectations will still be met.

10. It also asks regulators to submit to the LSB their finalised detailed plans setting out how they intended to deliver the expectations. This work was to be submitted by January 2012, and implemented by March 2012. These deadlines have passed, meaning that in order for the LSB to continue its leadership in this area we have reviewed our guidance to bring it up to date with the changing market.

Reviewing the 2011 guidance

11. The LSB's 2016/17 business plan set out that we would carry out a review of the 2011 guidance to establish whether it requires updating, and if we should change our approach to allow regulators to carry on their work on diversity more freely.⁶ This consultation forms part of that review. This decision was taken following work we carried out in 2015/16 assessing the progress regulators have made since the publication of the 2011 guidance.⁷

12. Since we issued the 2011 guidance, all regulators have started collecting diversity data, and have at least met the terms set out in the guidance document.

13. While the terms of the 2011 guidance have been met by all regulators, the degree to which regulators have used this to develop their regulatory processes varies across all regulators.

14. Discussions with all regulators in the last year have suggested a change in the approach of our diversity guidance would be beneficial to allow regulators more freedom in developing their own approaches to encouraging a diverse profession. We are conscious, however, that any changes should not make the previous five years of data collection redundant by formally changing suggested areas of data collection.

15. The revised guidance would seek to emphasise to regulators that they have an essential role to play, and that their role is unique when compared to others who share an interest in the issue and the legal services sector. It would also aim to make clear that the regulator is not be expected to be the sole guardian of the issue or the sole source of its solution. While their powers to request and collect relevant data from authorised persons are unique, the outputs of the collection exercise can be used by others to develop initiatives that help to encourage a diverse profession. Developing collaborative and complementary ways to address the issue of diversity in the legal profession is something we wish to see.

⁶ http://www.legalservicesboard.org.uk/Projects/pdf/20160412_LSB_Business_Plan.pdf

⁷ http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/pdf/20160525_Diversity_And_The_Legal_Services_Regulators.pdf

Proposed changes

16. Following the work we carried out in 2015-16, we have concluded that some regulators have now moved past the 2011 guidance, while others have started collecting the data but have not used the information gathered to begin to inform policy decisions. In order for the LSB to best empower regulators to progress further in encouraging the diversity of the profession it is important that our guidance remains relevant, with broader outcomes for the regulators to focus on. We propose to move this guidance in line with the section 162 guidance we have issued in other areas. This new approach, with a renewed focus on outcomes, would encourage regulators to take their work beyond data collection and allow them more freedom in determining their own targeted approaches to encouraging the diversity of their respective professions, whilst also encouraging those who have not taken their work as far to continue to develop.
17. The proposed guidance in Annex A details the outcomes we would expect regulators to achieve through their work. The outcomes are:
 - 1) The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time and where greater diversity in the profession needs to be encouraged;
 - 2) The regulator uses data, evidence and intelligence about the diversity of the profession to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities;
 - 3) The regulator collaborates with others to encourage a diverse profession, including sharing good practice, data collection, and other relevant activities;
 - 4) The regulator accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse profession.
18. The scope of the outcomes in the proposed new guidance is designed to encourage regulators to use the diversity data they have collected to inform regulatory and policy decisions. To achieve the outcomes, regulators that do not perform in this area would need to improve their use of diversity of data and their wider work. The need to make improvements in approach would be reflected in the future performance assessments.
19. We propose to allow at least 18 months from the publication of any revised guidance for regulators to make the relevant adjustments, if any are required, to their work before re-engaging them to discuss the impacts of the new guidance. By August 2018, we would expect regulators to have appropriate activities in place to encourage a diverse profession that deliver these outcomes. We would, however, contact regulators six months after publication to seek an update on the work being planned and undertaken at that point to inform the scope of the formal review at 18 months.

20. We propose introducing a formal assessment of diversity work being carried out by regulators.⁸ As such, we have provided some illustrative examples of evidence that a regulator might use to demonstrate achievement of the outcomes. Regulators should not feel restricted by these, and should be confident in providing alternative evidence should it display success in this area.
21. We also propose removing the model questionnaire from the guidance. At present, regulators are required to notify us of proposed changes to their data collection methods if it is deemed a departure from the current guidance. We consider that regulators should now be able to maintain and develop their own, independent data collection methods based on their own experiences.
22. We would expect regulators to continue collecting data on the diversity profiles of their respective professions. To allow comparison across all legal services professions, we would also expect regulators to work together and agree a common methodology, including common definitions, for diversity data collection.

Consultation questions

23. We invite respondents to submit responses based on the entire document at Annex A. Respondents may wish to consider the following questions:
- 1) Is the proposal to switch the focus of the guidance to outcomes beneficial to encouraging the diversity of the profession?
 - 2) Will the proposed guidance allow regulators the opportunity to develop their own approaches to addressing diversity issues in the legal services profession?
 - 3) To what extent are regulators already demonstrating achievement of the outcomes? If they are not, why do you think is this?
 - 4) How can the LSB ensure that the data the regulators collect continues to be comparable?
 - 5) Given the LSB's proposal to assess regulator performance in this area, what would be the most effective way to carry this out? How long should we allow regulators to implement changes before any potential future performance assessment?
 - 6) Will the proposed guidance:
 - a. deliver better services for consumers?
 - b. support innovation in legal services?
 - c. allow regulators to encourage business-led diversity initiatives?
 - d. encourage a more diverse profession?

⁸ http://www.legalservicesboard.org.uk/about_us/board_meetings/2015/PDF/15_17_LSBs_Leadership_Role_On_Diversity.pdf

Next steps

24. Responses to this consultation will help us to come to a sound, evidence-based decision on the appropriate next step for the LSB's diversity guidance.
25. Having considered all responses, we will issue a decision document on all responses, and address any major issues raised at consultation within this. At this stage, we will also issue our decision on whether or not we will publish new guidance.

How to respond

26. Responses should be submitted to the LSB by Friday 2 December 2016.
27. We would prefer to receive responses electronically (in MS Word or PDF format), but hard copy responses by post will be accepted.
28. Responses should be send to:
 - Email: consultations@legalservicesboard.org.uk
 - Post: Legal Services Board, One Kemble Street, London, WC2B 4AN.
29. We intend to publish all responses on our website unless a respondent explicitly requests that a response (or part of it) should be kept confidential. We will record the identity of the respondent and the fact that he/she has submitted a confidential response in our summary of responses.
30. Any complaints or queries about the process should be directed to the Consultation Co-ordinator, Jenny Hart, by one of the following means:
 - Email: consultations@legalservicesboard.org.uk
 - Post: Jenny Hart, Consultation Co-ordinator, Legal Services Board, One Kemble Street, London, WC2B 4AN.



Proposed guidance for legal services regulators on encouraging a diverse profession

The provision of guidance

1. Section 162 of the Legal Services Act 2007 (the Act) allows the Legal Services Board (the LSB) to give guidance:
 - About the operation of the Act and any order made under it
 - About the operation of any rules made by the Board under the Act
 - About any matter relating to the functions of the LSB
 - For the purpose of meeting the regulatory objectives
 - About the content of licensing rules
 - About any other matters about which it appears to the LSB to be desirable to give guidance
2. Guidance under section 162 may consist of such information and advice as we consider is appropriate. We will have regard to the extent to which an approved regulator has taken into account guidance when exercising its functions.
3. This guidance replaces that published by the Board in July 2011. It may be updated from time to time.

Purpose of this document

4. This document sets out our guidance to regulators on their regulatory arrangements and other activities for encouraging a diverse profession. It is aimed at existing regulators and those applying for designation as an approved regulator or licensing authority.
5. We consider a diverse profession a key aspect of developing a legal sector that best serves consumers and supports innovation. As such, we expect all regulators to be considering diversity through all regulatory activity, and as part of achieving a high performing legal sector. This guidance sets out the outcomes we expect the regulators to be able to display to stakeholders to prove that their work on diversity is evidence-based and effective.
6. We consider the information provided here gives sufficient clarity as to the outcomes we expect the regulators to achieve. It is also envisaged that this guidance will allow regulators more freedom to develop suitable, targeted approaches in their respective communities. This guidance will allow regulators to demonstrate a better understanding of the regulated community as a whole, and provide opportunity for collaborative working both across regulators and with other legal sector stakeholders.

Our approach

7. Under section 3 of the Act it is our duty to promote the regulatory objectives and to have regard to the Better Regulation Principles.
8. One of the regulatory objectives relates to encouraging an independent, strong, diverse and effective legal profession. This objective specifically mentions the importance of encouraging a diverse profession. This is reinforced by the references to a strong and effective profession, as the profession will be at its strongest and most effective if it harnesses the broadest range of talent from across the diversity of society.

Performance assessment

9. We have publicly committed to a performance assessment to assess regulator work on encouraging a diverse profession.⁹ We intend to use these outcomes to form the basis of this assessment.

Outcomes

10. By August 2018, we expect regulators to have appropriate activities in place to encourage a diverse profession that deliver the following outcomes:
 - 1) The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time and where greater diversity in the profession needs to be encouraged;
 - 2) The regulator uses data, evidence and intelligence about the diversity of the profession to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities;
 - 3) The regulator collaborates with others to encourage a diverse profession, including sharing good practice, data collection, and other relevant activities;
 - 4) The regulator accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse profession.
11. Beneath each outcome below, we provide examples of evidence that a regulator might use to demonstrate achievement of the outcomes. Regulators should not feel restricted by these, and should be confident in providing alternative evidence should it display success in this area.

Timetable

12. We will the progress that regulators have made in August 2018. Thereafter, we envisage on-going monitoring of regulators' performance on encouraging a diverse profession to be carried out through a formal performance assessment.
13. We will contact regulators six months after publication for an update on the work being done by that point to inform the scope of the formal review after 18 months.

⁹ http://www.legalservicesboard.org.uk/about_us/board_meetings/2015/PDF/15_17_LSBs_Leadership_Role_On_Diversity.pdf

Outcomes

Outcome 1: *The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time and where greater diversity in the profession needs to be encouraged*

Evidence of progress/ achievement could include...	<ul style="list-style-type: none"> • Data collection, analysis, and publication • Seeking improvements in response rates (including survey design) • Well networked in sector • Awareness and understanding of other initiatives in the sector – what works and what doesn't
--	--

Outcome 2: *The regulator uses data, evidence and intelligence about the diversity of the profession to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities*

Evidence of progress/ achievement could include...	<ul style="list-style-type: none"> • Analysis of data collected • Impact assessments in policy development • Sharing good practice examples from supervision etc.
--	--

Outcome 3: *The regulator collaborates with others to encourage a diverse profession, including sharing good practice, data collection, and other relevant activities*

Evidence of progress/ achievement could include...	<ul style="list-style-type: none"> • Understanding of work being done to address diversity issues in regulated community by others, for instance by representative bodies, by employers and firms, or education and training providers • Working with stakeholders – other regulators, professional bodies and groups, firms and employers – to build and educate the profession on the business case for diversity • How regulator data is being used to inform others' work – being transparent with the data it collects
--	--

Outcome 4: *The regulator accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse profession*

Evidence of progress/ achievement could include...	<ul style="list-style-type: none"> • From time to time, the regulator states publically what it knows about the diversity of the profession and the actions it is taking, both directly and indirectly, to encourage a diverse profession (for instance in its annual report or on a section on its website) • Publishes details of its firm-led diversity initiatives/activities • If nothing is proactively provided, this outcome could be demonstrated in response to a request from the LSB
--	---