

## Update on legal services regulators progress against revised diversity outcomes (Autumn 2017)

### Introduction

1. The Legal Services Board considers a diverse workforce 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 issues in their regulatory activity, and as part of supporting a high performing legal sector.
2. We published revised guidance for legal services regulators for encouraging a diverse workforce in February 2017. The revised guidance is less prescriptive than the previous version to allow the regulators to take targeted approaches, suitable for their regulated community. The revised guidance also looked beyond data collection and monitoring through the introduction of outcomes 2-4, focusing on regulatory activities, stakeholder networks and accountability.
3. In August 2017, six months since the publication of the revised guidance, we contacted the regulators seeking an update on work that has been done, or is planned. Given the broader focus for outcomes 2-4, we anticipated progress would be made at a later stage, compared to outcome 1.
4. This paper provides an update on the regulators' progress against the revised outcomes. It identifies areas of good practice, and provides an indication of our expectation for our formal review planned for August 2018.
5. Feedback about their progress updates have also been provided to each regulator.

### ***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 workforce needs to be encouraged.***

6. Developing a clear and thorough understanding of the diversity profile of its regulated community will provide each regulator with the evidence base necessary for identifying and understanding areas where greater diversity can be encouraged.
7. We discuss the methods used by regulators to develop their understanding of the diversity profile of their regulated communities below.

#### Diversity surveys

8. All regulators collected data from their regulated community through a diversity survey. Outcome 1 provides regulators with the freedom to develop their own diversity data collection approach. Regulators are expected to review this approach to ensure they collect the best possible data, by the most appropriate method, particularly with respect

to sensitive characteristics. They are also expected to maintain the ability to report on trends across characteristics since 2011.

9. Several regulators reported poor response rates as a key challenge to collecting comprehensive data. We note a number of efforts were made to improve this outcome. Techniques that were found to provide some improvement included:
  - a. Engagement with the regulated community to promote the purpose and importance of data collection. Both the SRA and ICAEW remarked that encouraging conversations around this work was essential to its success. CLC said it planned to do this prior to their next collection. SRA and CLC told us they were also considering engagement as a strategy to improve any potential underreporting of disability.
  - b. Consideration of question design and survey administration in order to improve response rates. The Faculty Office (FO) noted it increased response options on certain questions to promote greater inclusivity. CILEx Regulation have assessed the frequency of their diversity survey to identify whether this was adversely impacting response rates.
10. Several regulators reported collaborating with the regulators of firms which employ their regulated members, to obtain data on these members. For example, CILEx Regulation and ICEAW are working with the SRA. Similar collaborative efforts may assist regulators who have identified the double capture of data as an issue.

#### Data from regulatory activities and operational processes

11. Several regulators told us how they were using, or planning to use diversity data captured through regulatory processes to assist in developing the diversity profile of their regulated community. Examples identified during our conversations with the regulators included:
  - a. CILEx Regulation's collection of diversity data through the undertaking of their enforcement standards review.
  - b. The SRA is considering how best to improve the diversity data from those coming into the profession as part of its work to implement the Solicitors Qualification Examination (SQE).
  - c. The BSB's monitoring of diversity in complaints handling and the disciplinary system to ensure regulatory activities are conducted fairly and in accordance with the duty to promote equality and eliminate discrimination.
12. We note that this approach can be particularly useful where the regulator does not consider its diversity collection to provide the full picture. We encourage regulators to consider whether data collected from their organisational and regulatory activities can assist in developing a deeper understanding of the diversity profile of their regulated community.

#### Research

13. Several regulators further developed their understanding by undertaking or commissioning research which identified where diversity could be encouraged or where there are barriers to promoting diversity. Examples of this included:

- a. The BSB's research with students to inform diversity outcomes for future bar training and their planned research into 1) improving racial diversity in the profession, 2) reducing discrimination and increasing positive action and 3) the impact of training providers equality policies upon student experiences.
  - b. The report produced for the SRA by Leeds University Business School focusing on the impact of gender and ethnicity on career progression which includes insights on intersectionality.<sup>1</sup> This is complemented by the SRA's thematic review of law firms looking at what works in creating gender and ethnic diversity.
  - c. ICAEW's research with Cardiff University into Accounting and Diversity.
14. We understand that financial constraints may not make it viable for all regulators to undertake or commission research into diversity issues. However, we encourage regulators to consider research published by others in the sector and whether this may assist in further understanding diversity issues within their regulated community.

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

15. Analysing and understanding diversity data is essential to the regulator's ability to inform successful diversity initiatives, as well as assess the implications for diversity of new and existing policy and processes.
16. There was wide variation in the extent of progress the regulators made against this outcome. The SRA, the BSB and ICAEW have shown significant progress against outcome 2, each with a large number of initiatives currently underway, or planned, to address a number of different diversity issues.
17. Activities relating to outcome 2 will be informed by analysis of diversity data collected under outcome 1, and therefore likely to be more targeted to regulated communities. It is an opportunity for regulators to incorporate the pursuit of diversity within their work programme. For example, the SRA told us it has made a decision not to draft another separate three year diversity strategy, choosing instead to 'mainstream' diversity into its overall corporate strategy. The BSB noted the use of equality impact assessments in the course of regulatory policy development to measure the direct and indirect impact on diversity.
18. The FO, CILEx Regulation and CLC identified they are currently analysing or plan to analyse data prior to the formal review. We consider this to be acceptable for the purposes of this update.

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<sup>1</sup> Intersectionality acknowledges that the way individuals experience the profession cannot be captured effectively by one social characteristic alone (e.g. gender) and, as such, emphasizes integrating social characteristics to explore *inter* and *intra* group differences, for example, how experiences of white females may differ from females of other ethnic groups. (Centre for Employment Relations and Innovation and Change, University of Leeds and Newcastle University Business School (2017). *Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales*. Final Report for the Solicitors Regulation Authority. p.5.)

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

19. Meaningful collaboration with those both within, and beyond, the profession has the potential to maximise the impact of diversity initiatives. Under outcome 3, we expect regulators to consider opportunities to deliver joint initiatives, and for facilitating a shared understanding of diversity issues within their regulated community. The joint presence of regulators on the SRA bus at Pride in London this year is a good example of joint support for diversity issues in the profession.
20. In their updates, nearly all regulators noted collaborative work they have undertaken, or plan to undertake, prior to August 2018. Examples of collaboration to encourage a diverse workforce are discussed below.

Collaboration with representative bodies

21. The SRA is working alongside the Law Society in the Legal Professions Wellbeing Taskforce, a group set up by LawCare. Taskforce members have been sharing good practice, attending events and promoting awareness through social media campaigns.
22. IPReg reported that its representative organisations (CIPA and CITMA) have established 'IP inclusive', a pan-professional task force which aims to implement diversity initiatives within the profession.
23. CILEx Regulation told us it was working with CILEx to deliver more thoughtful collaboration on activities to encourage diversity. This included establishing a LGBT special interest group and increased sharing of the regulated community's diversity data.
24. The FO described their plans to engage with the Notaries' Qualifications Board in autumn 2017 to promote diversity within recruitment.
25. We recognise successful collaboration will depend, in part, on the representative body's willingness to engage. However, we strongly encourage those regulators who have not engaged with the representative side of the profession about diversity to explore opportunities to do so.

Collaboration with the regulated community

26. A number of regulators identified ways in which they were engaging with their regulated community beyond the collection of diversity data.
27. The SRA noted that strengthening relationships with their regulated firms on diversity issues and sharing best practice has supported its work to promote diversity in the profession. The SRA advised it is now looking at ways this can be shared amongst other firms. For smaller firms, the SRA told us it provides support through its online community, web based resources, helplines and call back services and by holding regulatory workshops in partnership with specific diversity networks.
28. The BSB told us that in its view co-creation is an important to the credibility of diversity initiatives. This is reflected in its workshops with barristers to inform strategies to reduce discrimination and barriers to retention/progression is reflective of this. The BSB plans to host a roundtable in December 2017 to identify specific approaches for regulation in improving race equality in the profession, with implementation of the identified action plan to occur 2018/19.

29. ICAEW told us it provides secretarial support to the Professional services LGBT network. LGBT leads from their larger regulated firms participate in the group, which promotes the development of LGBT initiatives within the firms.
30. We encourage those who have had limited engagement with their regulated community about diversity to consider potential opportunities to do so.

#### Collaboration amongst regulators

31. We encourage regulators to engage with their colleagues through the Regulators Forum. Several regulators identified the forum as an opportunity to discuss strategies that have provided success, or to identify solutions to common issues such as limited response rates.

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

32. Regulators should be transparent and accountable for their efforts and their impact with regard to encouraging a diverse workforce. Initiatives undertaken, or planned, by the regulators to promote progress against this outcome are discussed below.

#### Publishing diversity data

33. All regulators published the data collected through diversity surveys on their websites.
34. ICAEW, the SRA, the BSB and CILEx Regulation all published a commentary alongside this data. The commentary often identified where further efforts to encourage diversity could be made, and demonstrated attempts to understand why diversity may be lacking. The SRA has also developed a comparison tool so that firms can see how they measure up compared to others.
35. The FO and IPReg, advised they intend to provide greater commentary about their understanding of the diversity profile of the regulated community when publishing their most recent collection data. CLC advised it intends to do the same for their next diversity survey.

#### Communications

36. The SRA, CILEx Regulation and IPReg all pointed to their use of articles and commentary to raise the profile of diversity issues within their regulated community. Not only is increased engagement likely to promote progress against all the diversity outcomes, it also has the potential to promote culture change. This will play a role in encouraging a diverse workforce.

#### Evaluation framework

37. Several regulators identified plans to evaluate the impact of their diversity initiatives. For example, the BSB is developing an evaluation user guide and the SRA is developing frameworks for evaluating the progress and effectiveness of their diversity initiatives.
38. Other examples include ICAEW's plans to assess the impact of future policy development through the monitoring of metrics defined in their September 2017 Diversity Report, and IPReg's plans to review the progress of diversity initiatives it funds against the diversity outcomes.

39. In addition to enabling regulators to account to stakeholders for their achievements, evaluation can provide detail which will help regulators successfully direct their efforts in achieving the preceding outcomes. We acknowledge some regulators are more advanced in their approach to diversity and the implementation of an evaluation framework will not be proportionate for all regulators. However, given the potential benefits of evaluation, we do encourage regulators to consider whether proportionate methods exist for evaluating their achievements.

### **Next steps**

40. The updates provided by regulators demonstrate that some progress has already been made in the six months since the revised LSB guidance has been published. They also identified a number of interesting initiatives that the regulators have planned for the next 12 months and beyond.
41. As identified above, the revised guidance presents an opportunity to move beyond merely collecting and monitoring diversity data. We expect the regulators to commit to understanding and utilising the data collected to identify areas within their regulatory community where greater efforts are needed to improve diversity.
42. We also expect the regulators to build on inter-regulator cooperation and collaboration. For example, the Regulators forum presents a unique opportunity to share creative strategies and lessons learnt in support of encouraging diversity within the legal services. Where appropriate, the LSB will also seek to engage with the regulators on the topic of encouraging diversity in the profession through this forum.
43. We will provide the regulators with greater detail about the scope of the formal assessment in spring 2018. Based on our assessment of these updates, during the formal review we will expect regulators to be able to demonstrate their:
  - a. consideration of their data collection methods and whether they are, or remain, fit for purpose.
  - b. consideration of how collaborative efforts can assist in overcoming challenges to delivering progress against the outcomes.
  - c. evidence of progress of planned initiatives identified during this update.