

SBL/NUS event – Legal Futures 2010
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The Legal Services Board is the oversight regulator for providers of legal services in England and Wales. We oversee the traditional legal services regulators – including the Bar Standards Board and the SRA – and share with them a set of Regulatory Objectives created by Parliament.

The Act which created us – the Legal Services Act 2007 – was designed to set a new framework for legal services regulation in response to concerns about poor consumer redress and anti-competitive practices in the sector. Major priorities have included institutional change to the frontline regulators, opening up the market and reforming the handling of complaints, primarily through the creation of the Legal Ombudsman. But we have a strong and increasing interest in the strength of the legal workforce and its education and training. Diversity is one of the key elements of that and I want to talk today about why that is and what we're doing about it.

Changing the diversity of the legal workforce to better represent the communities which it serves is as complex a challenge as it is a worthy one. Happily, a consensus has now emerged across the profession and among external commentators on its importance – although there is perhaps less agreement on “how”. Creating a step change in diversity calls for a long game, not a sound-bite or two.

Last year’s Fair Access to the Professions report highlighted a range of generic issues for all professions to consider. The legal professions are no different to others, although it’s fair to say that they start with a better track record than some others. That’s both because of clear commitment from professional leaders and a combination of high quality lobbying and practical action from bodies like the SBL and Black Solicitors Network - pricking the conscience of the profession as a whole and supporting initiatives like this.

Why is this important ? At one level, it’s obvious: making sure that the workforce is genuinely open to the widest pool of talent is key in guaranteeing that the lawyers of the future represent the best and brightest of each generation and not just those from traditional backgrounds.

But that's not just an end in itself. Crucially, if we achieve that, we ensure that all the diverse communities in modern Britain have confidence in the rule of law and find themselves better able to access justice when they need it. So diversity in the profession is about making the law work better for a diverse society – not just about more work for more diverse lawyers.

So we're delighted to have a clear Regulatory Objective from Parliament in this area - *to encourage an independent, strong, diverse and effective legal profession.*

The profession has never had any difficulty in fighting for its independence – and rightly so. But – historically at least – it's hasn't tended to see diversity as carrying equal weight. That's changed markedly in recent years – and we want to accelerate the pace of change further.

So where are we? Diversity initiatives across the sector have delivered some significant improvement at entry level. 60% of newly qualified solicitors in 2008/09 were women (compared with 25% in 1978/79 and 53% in 1998/99) and 53% of those called to the Bar in 2008/09 were women (compared to 24% in 1977/78 and 41% in 1991/92). In relation to BME practitioners, 22% of newly qualified solicitors in 2008/09 self-classified as black or minority ethnic (compared with 13% in 1998/99); and 16.6% of pupil barristers in 2007/08 were BME. These numbers compare favourably with the

ethnicity profile of the population as a whole – the 2001 census showed 7.9% of the population was from a non-white ethnic group.

What is much less clear is whether this progress at entry level is being sustained through retention and progression. The Black Solicitors Network survey of the top 150 firms for their league table last year showed that only 3.5% of partners in respondent firms are BME, with only 22% of partners being women. Among the courts based judiciary (as opposed to the tribunals judiciary) 19.4% of judges were women in April 2009, and 4.5% were BME. Clearly this is reflective neither of the population nor of rising numbers of women and BME lawyers coming in at entry level – practitioners who one would otherwise expect to grow in seniority.

So, there's a disconnect. Put simply, the '*trickle up* effect' is not happening at the pace which the numbers would lead you to expect. So we need to work out where the blockage is in the pipework and get the tap properly turned on.

Unless we do, we'll be here for at least another 20 years before representation is more equal and I simply don't believe that that is good enough.

Related issues emerge when we look across the industry. We may talk in the panel discussion about the changes the Legal Services Board is spearheading in relation to new competitive models. We

believe passionately that these changes are essential to improve access to justice, but they are going to be challenging. They'll force firms to assess their business models, in much the same way that changes to the legal aid system do.

Some say that the changes will disproportionately impact on BME lawyers. I'm not actually sure that that perception is right. But, let's assume that it is and ask ourselves why.

The answer lies in the structure of the industry. Research evidence suggests persistent structural inequalities – most obviously illustrated by salary and status. For example, a 2008 Law Society survey found that male solicitors earn on average £19,000 more than females. And that white solicitors earn, on average, £10,000 more than black and minority ethnic solicitors. Moreover 2009 Law Society statistics show that 25% of BME solicitors in private practice have partner status, compared with 38% of white solicitors.

We continue to see white graduates from higher socio-economic backgrounds overrepresented in large city firms and the Bar, while BME lawyers, women and people from less well-off backgrounds are concentrated in small High Street practices. 50% of BME solicitors work in firms with 4 or fewer partners. Only 28% of white solicitors work in firms of this size. There is also some evidence

that women and BME practitioners leave the profession in disproportionately high numbers.

None of these problems confined to England and Wales – research shows similar issues in other jurisdictions. For example, a US study found that 65% of black associates intended to leave their firm within two years, in comparison to 45% of white males. And, of course, one can find similar – and sometimes far worse – patterns in other professions. But being just above a pretty mediocre average is hardly a reason for complacency.

So, if changes in BME representation in the profession emerge at the same time as changes in competition and legal aid arrangements, I'd contend that they point to these larger systemic issues. That's a reason to dig deeper and tackle root causes – not a reason to delay changes that would otherwise deliver access to justice in a financially constrained environment.

What is to be done?

To change cultures and bring reforms in working conditions depends in part on having leadership at the top. On the whole, that hasn't been lacking. If I particularly praise the work Geoffrey Vos did as Chairman of the Bar, that is not to downplay the contribution

of others both at the Bar and in the Law Society. But it's all crucial to hit all the right issues.

The profession's efforts remain primarily focused on entry level. There has been much good work undertaken with schools and universities. For example, the Pathways to Law programme established by the Sutton Trust and College of Law; and the Inspiring Futures career experience events run jointly by the Law Society, Bar Council and ILEX.

It's really important that these initiatives continue – but we are not giving anything like the same weight to the challenge of improving progression rates.

In other words, we've got to have a "both/and" strategy - both entry and progression – not an either/or one.

Through our business plan, we have put making a difference in relation to equality and diversity at the heart of our work. We're clear that more needs to be done, and faster.

We aim to do three things:

First, to step up the debate to make the issue central.

Diversity in the legal workforce will no longer be an adjunct to rules and regulation – a ‘think piece’ that generates lots of talk but little by way of action.

Instead, we are clear that driving better levels of diversity is a core **regulatory** issue - not just in its own right, but also as a theme running through our other initiatives, whether through opening up the market via Alternative Business Structures, ensuring regulatory best practice amongst the front line regulators or improving our ability to learn from patterns of complaints.

The second priority is to build the evidence base.

We’ve commissioned major new research from the Universities of Leicester, Westminster and Leeds looking at what women and BME lawyers themselves consider to be the barriers to retention and progression.

The findings told us a great deal more about the degree to which participants felt that they had real choice over their area of specialism, or whether they felt pushed towards or away from parts of the industry for cultural reasons within firms.

It uncovered the kind of factors that make some more keen to go for partnership, with others leaving to work in-house.

Some of the quotes are really telling:

'Very few [male solicitors] do family care work, the caring, nurturing work and it's still mainly blokes who do the business, commercial side...it's seen as natural.'

'I'd go into the major courts in the area [N.E.] and be the only ethnic minority face and ... my first experience of going into a family court in [] the court staff said to me 'are you the interpreter?' 'No' 'Are you the client?' 'No' 'Are you the solicitor?' 'No'; and then I said 'I'm counsel' and they were completely taken aback. This was 2004/5. I'm still very conscious of the fact that as an Asian woman I'm in a minority'*

BME barrister

Some of those quotes may be rather dated and context specific, of course, but evidence was generally consistent. Overall, the research revealed a number of key themes:

- First, the fragmentation of the profession and consequent nuanced nature of respondents' experiences – there's a real message about shopping around for potential new entrants;
- Second, the legacy of the professions white, male, socially elite origins and the significance of cultural stereotypes;
- Third, the importance for career success of personal relationships and bonding and socialising;

- Fourth, the lack of transparency of some key procedures and practices in some organisations, with an emphasis on “commitment” which was too often translated into an unsustainable long hours culture.

We launched the findings at a diversity conference at University of Westminster last month – and you can read them in full on our website. There was good debate about some of the key recommendations, such as more effective and formalised mentoring and promoting flexible working in a way that doesn’t equate it a perception of “lesser commitment”.

I’d recommend that research to you – not least because it may give you some good questions to ask your potential employers – because, remember, you’re interviewing them as well as the other way round!

Alongside this, my team conducted a review of academic literature on diversity in the profession. This was distributed to top firms and chambers, universities, regulators and other major players when it comes to reshaping the workforce. You can find this on our website. That’s a good read too.

The third major priority for the LSB is transparency.

We have to be able to evaluate measures and identify whether or not we are achieving real change through our efforts. I'm not really interested in blanket policies that cost firms to develop and implement but deliver little; or in schemes that are expensive and time consuming, but have not been evaluated; or in bureaucracy for the sake of it. Instead, we need growing knowledge and understanding to make targeted and cost effective interventions.

To do that, we need to drive transparency about diversity, not just at the level of profession as a whole, but at the level where it will really make a difference to each one of you individually – the level of individual firms and chambers.

Transparency at that level gives a really powerful incentive for leaders within those organisations to look in the mirror, compare themselves with their peers and be challenged, inspired – or perhaps even embarrassed – into taking action.

So, we are considering putting in place a new regulatory requirement on the front line regulators to instruct all firms and chambers to carry out an annual workforce diversity survey. The results of this would be published on their websites and reported to their regulator.

To give you a sense of how this will look, we are proposing that the diversity survey includes all the diversity strands currently captured by the public sector equality duty under the Equality Act - namely gender, race, age, disability, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation.

Crucially, we also want to cover socio-economic background in order to reflect the challenge of widening the legal profession to lawyers from non-traditional and low-income backgrounds.

This is not burdensome stuff. I must say, to give credit where it is due, some city firms are already doing this, demonstrating that it is eminently deliverable. We've done it ourselves. As an organisation of 33 people with a Board of 9, we went from deciding to do the survey to having the results in 3 weeks flat and got a response rate of 79% . We'll be publishing this data on our website shortly.

And what it does is to accentuate the possible. Lots of people wring their hands and portray this as someone else's problem – claiming stubborn inequalities are really due to the admissions policies of the universities, or the quality of secondary schooling. To some degree this is not untrue – but just because a firm can't do everything, it doesn't mean that it shouldn't do anything.

Findings from our research demonstrate with immense clarity that structural factors and the cultural ethos within firms each play a crucial role in improving retention and progression rates. Each of these factors is directly within the control of the individual business – and so the responsibility – and the opportunity - lies with them too.

Greater transparency about the diversity make-up of the profession at firm level will deliver four main impacts:

- First, it will drive behaviour by regulated entities to improve performance;
- Second, it will provide evidence for regulators and others to identify priorities for action, whilst helping them target resources more effectively through better understanding of the problem;
- Third, it will set a baseline for evaluation of current diversity initiatives; and
- Finally, it will enable the regulators to evaluate wider policy changes more effectively in relation to their impact on equality.

We are not talking about imposing quotas or targets, nor publishing a sector-wide league table. On the latter, good work is already going on, led by organisations like the Society of Black Lawyers and the BSN – and we hope that this work continues. But we are not yet convinced that it's a matter for regulation. League tables can have strange effects – especially for small organisations.

So, at this stage, what we are considering asking the front line regulators to do is to ensure that firms and chambers become more open through publishing the results of their diversity survey.

Greater availability of data will enable individuals and researchers to better hold firms to account through highlighting the best and worst performers – and the nature of the gap between them.

Above all, it will enable both corporate and individual consumers to make informed choices about where they procure their legal services – creating a commercial incentive for that step change to happen.

That's what American corporations increasingly do – and that's one reason why multinational City firms have done some good work in this area. We can expect that pressure to increase in an increasingly globalised market place, but we think that transparency will help the UK consumer bring similar pressure to bear as well.

Diversity will no longer be something just talked about – action for public policy reasons and commercial impetus will be closely linked.

Conclusions

As a small organisation, the LSB will be unable – by itself - to deliver the impact we need through delivery-based initiatives and outreach programmes.

But what we can do – using our cross-sector regulatory remit – is to bring workforce diversity into the mainstream of regulation in a way that it has certainly not been up until now.

And what we can do because of our mixture of professional and economic regulatory obligations is to spot ways of aligning regulatory and commercial incentives. Transparency does that better than any other regulatory tool.

New obligations for openness and new ways of evaluating impact will mean there's no turning or running away from the importance of this work. Results will be there for all to see. That's what the new approach to regulation in this area can offer.

And having the people in this room entering and progressing in the profession will be one of the best, first signs of success – and one of the best ways of making that success ever deeper and more embedded in the long-run. Thank you.