

Eldon Law Lecture: LSB Chairman David Edmonds

I'm delighted to be here and am very pleased to be part of the Eldon Law lecture series.

Today I'd like to talk about the kind of people who become part of the legal workforce - how they get in, and from there, how they get on.

This is appropriate in view of the fact that many here today are the lawyers of the future.

The question at the heart of my remarks is this:

What is the optimum make-up of the next generation of lawyers, having in mind the qualities necessary to deliver access to justice and ensure the rule of law well into the future?

The Legal Services Board and the approved regulators are under a statutory duty to encourage an independent, strong, diverse and effective legal profession.

Many of you will know that there is currently a major review underway to make proposals for reforming the education and training system.

This starts from the premise that the current framework for training – which largely dates back to the last major review in 1971 – might no longer be best placed to meet consumers' needs.

Times are changing.

Lawyers qualifying in the next few years will practice in an environment in which new types of legal businesses are emerging.

New entrants are coming into the market and lawyers are working in new types of practice, sometimes collaborating formally with other types of professional service providers.

Legal work itself is changing.

We need to be sure that routes into the profession, and development when qualified, equip members of the workforce with the skills they need to protect consumers.

Age-old values of professionalism and ethics will, of course, remain. But in certain key other respects, the landscape for education and training must modernise and change.

One of those areas relates to the make-up of the legal workforce itself.

Historically, access to the professions in this country has been narrow, with a tendency to feel closed off to those who you might call non-traditional candidates.

There have been many programmes undertaken by professional groups and regulators to try to change this, with initiatives designed to support more diverse applicants.

At the point at which applicants enter the system there has been progress.

However, progress trails off markedly as we look higher up the profession ladder.

Let me give some statistics and people can reach their own conclusions.

The Bar (from the 2011 Bar Barometer)

Gender composition – BPTC

2004/05: 51% male and 49% female

2008/09: 48% male and 52% female

Balanced at post graduate training stage

Gender composition – at Call

2005/06: 49% male and 51% female

2009/10: 47% male and 53% female

Balanced at point of call

Gender composition – pupillage

2004/05: 50% male and 45% female (5% missing data)

2008/09: 55% male and 41% female (5% missing data)

Change in balance, percentage of men increased by almost 5% and percentage of women decreased by same amount

Gender composition – QC

2005/06: 92% male and 8% female

2009/10: 89% male and 11% female

Gender composition – The Self Employed Bar

2005/06: 70% male and 30% female

2009/10: 69% male and 32% female

Again no significant change in five years

Gender composition – The Employed Bar

2005/06: 55% male and 45% female

2009/10: 54% male and 46% female

Much closer to parity at the employed Bar.

Ethnicity – BPTC

2004/05: 35% BME, 61% white (4% no data)

2008/09: 44% BME, 34% white (22% no data)

Ethnicity – at Call

2005/06: 25% BME, 51% white (24% no data)

2009/10: 44% BME, 54% white (2% no data)

Change may be due to data collection improvements

Ethnicity – pupillage

2004/05: 16% BME, 78% white (6% no data)

2008/09: 13% BME, 82% white (5% no data)

Ethnicity – QC

2006/07: 4% BME, 91% white

2009/10: 4% BME, 92% white

These figures show the trend from point of call to pupillage is perpetuated throughout the career of barristers

NB: Proportion of BME in general population was 10.5% in 2005/06 and 20.12% in 09/10

Solicitors (from Law Society Annual Statistical Reports)

LPC – gender

2005/06: 37% male, 63% female

2009/10: 38% male, 62% female

Trainees – gender composition

2005/06: 38% male and 61% female

2009/10: 37% male and 63% female

Solicitors with practising certificates – gender composition

2005/06: 53% male and 47% female

2009/10: 54% male and 46% female

Partners – gender composition

2005/06: 77% male and 23% female

2009/10: 74% male and 26% female

Proportion of female partners low given women outnumber men at both LPC and trainee level

LPC – ethnicity

2005/06: 25% BME, 59% white (16% unknown)

2009/10: 29% BME, 64% white (7% unknown)

Trainees – ethnicity

2005/06: 17% BME, 78% white (6% unknown)

2009/10: 19% BME, 75% white (7% unknown)

Solicitors with practising certificates – ethnicity

2005/06: 9% BME (% of all solicitors with practising certificates)

2009/10: 11% BME (% of all solicitors with practising certificates)

Partners - ethnicity

2005/06: 7% BME, 82% white (11% unknown)

2009/10: 8% BME, 81% white (10% unknown)

NB: Proportion of BME in general population was 10.5% in 2005/06 and 2012% in 09/10

The picture is clear – more women and BME lawyers are entering the system, but are either dropping out altogether or failing to progress to the higher levels.

Data over the years shows very little change.

Why is this important?

Firstly, for legal businesses themselves.

It becomes harder to identify top talent and more competitive for firms to recruit when you are choosing limited and homogenous groups.

We need to widen the pool to keep the labour market flexible. Law firms have a major interest in getting in the best and the brightest to deliver services to clients; so do other professional services firms.

Legal businesses should widen their search to find the brightest and best from more diverse backgrounds.

Having found talent, and invested often huge amounts in training and developing them, it is crucial to retain them.

If talented people are not putting themselves forward, or if they fail to progress or stay on, then that business is failing to get the most out of its best asset – its employees.

Secondly, we have a major public interest value.

The people who deliver legal services have a central part to play in protecting access to justice.

I believe to retain public confidence when they apply the law to the facts, and seek to deliver justice, lawyers need to reflect the broader society.

Many lawyers will apply for significant public office in the Judiciary, from which position they themselves will dispense justice to, and on behalf of, the public.

It is arguable that the continued integrity of the system, and public confidence, depends on lawyers being drawn from a much wider pool than in the past.

Thirdly, in a genuine meritocracy, fairness demands a level-playing field.

The legal services sector has a major role to play in driving social mobility, with the industry acting as a major employer.

Education and training reform

All proposals emerging from the review into education and training need be checked for their impact on diversity.

The legal services market is becoming more pluralist, with technological and communications advances creating new ways to deliver services.

New types of legal practice – the Alternative Business Structures – are bringing in fresh ways of working and importing different cultures.

There's much we can learn from other sectors and I hope to see innovation challenge some old orthodoxies.

Just as legal practice itself is become more diverse, we are likely to see a move towards more varied routes into the profession.

The old paradigm of the three-year academic degree (or fast-track postgraduate conversion), followed by the single-year practical course, needn't squeeze out emerging alternatives.

The success of the legal executives in appealing to more diverse types of practitioners through an in-job training approach stands as a showcase.

The review needs to be ambitious and far-sighted in re-imagining routes towards qualification – there's no need for 'sacred cows'.

In this country, unlike in the US, there is a relative isolation between education and practice.

The training stage needs to do more to reflect the real pressures of the legal workplace.

A lot of innovative thinking is going on at Northumbria, with a framework for giving students the experience of working in a simulated law firm environment.

Reflecting the real demands of private practice, as well as giving students the chance to interact with each other as they would do in a law firm, is a real example of educational innovation.

The regulators have a role to play in facilitating, rather than getting in the way of, innovation and diverse course design.

Providers need to be free to structure and deliver programmes in a way that directly addresses employer and student demand. Changes in the market make this inevitable – we need diverse

routes into the profession to reflect the more diverse market. Traditional routes will, of course, remain, but as one option – not the golden path.

We hope that a re-imagining of the education and training framework can help with broadening the profile of the workforce. This is the kind of fundamental sector-wide change we need to see if we are to widen the base of lawyers.

The regulators need to step back and allow this to happen, but they also need to be pro-active too.

What we're doing

As another step towards the systemic change we need, last year we published new regulatory requirements for law firms and chambers.

These will require those entities to conduct diversity surveys across their entire workforce and to publish the results.

Every individual in the legal workforce will be asked to self-classify against the following characteristics:

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

At the end of 2012, the first round of published summary data will be made available at entity level.

Firms and chambers will need to publish data on all of those characteristics, except sexual orientation and religion or belief.

This takes up the baton on each of the characteristics protected under the Equality Act 2010.

However, alongside this, the legal profession should also take a lead where we can do more.

To this end, we are also asking for firms to publish data on socio-economic factors, including whether individuals attended a state or fee paying school and whether they were the first in their family to go to university.

We have a big challenge in the legal services sector in attracting applicants from families where parents are not themselves professionals.

We need to do more to see these types of applicant get through, rise to the top of their field, and help make social mobility real in modern Britain.

Transparency is important in this area if we are to track the impact of initiatives and put pressure on firms to recruit more widely.

While approved regulators will need to gather together aggregate data to provide the overall national picture, the gauntlet really has been thrown down to individual firms.

That's because the decisions that tend to affect the make-up of the workforce are, in reality, made by senior managers and owners – so let's put the spotlight on them to account for the diversity of their firm.

Some firms will be able to demonstrate their diversity and others the quick progress they are making to improve it.

But for others there can be no hiding behind the profession's overall numbers, or wider social mobility challenges.

Firms can change if they want to.

By throwing open the curtain and putting the numbers out there for all to see, consumers can judge firms on whether they have chosen to take action.

Because of this, firms will feel a commercial incentive to do more to improve diversity, while the data will also telling senior partners much more about the make-up of their workforce.

Meanwhile, overall data collected by the regulators will help us track changes to the national picture, and may inform further interventions later on.

Busting the myths

There have been a number of misconceptions that have emerged around these new requirements, so I'd like to do some myth-busting:

Firstly, that this is, in some way, political correctness gone mad.

What we are proposing is straightforward – we want firms and chambers to be open and transparent about diversity.

We are not trying to control who firms and chambers appoint or promote – that is a matter for them.

Nor are we trying to impose a vision of a 'perfect' firm where the representation of particular groups is exactly in proportion to the wider population.

But we do want to put pressure to start identifying and tackling the barriers facing particular groups.

If the figures indicate sprawling gaps, then of course they need to do more to encourage applicants from a wide range of backgrounds.

Businesses right across the country are under the same pressures. Government and Parliament have put the spotlight on this as a matter of urgency in public policy.

In the legal services sector, requiring transparency from firms is a light touch way of recognising that we need to modernise and improve.

The legal sector, given its significant role in protecting the rule of law and providing our Judiciary, should be ahead of the game rather than laggards.

Secondly, that this is onerous or otherwise burdensome.

Let's be clear: what we are talking about here is an annual diversity survey, published by the firm and passed to the approved regulator.

My Board carried out this exercise in our organisation of just over 30 employees with minimal time, expense and effort. If we can do it, others can too.

Thirdly, that we are asking for sensitive data that might be an intrusion of privacy.

It's important to note that answering the questions remains voluntary.

Everyone has the right to '*prefer not to say*'. This is not about finding out information on individuals.

Rather it is about identifying where people with particular characteristics face barriers, so that targeted action can be taken.

That said, not everyone is familiar with diversity monitoring so firms will need to communicate clearly why this is necessary and how the data will be used.

Fourthly, that publication at firm level will put people off responding.

Publication will put the onus on individual employers to take action by making them publicly accountable.

This isn't about regulators telling them who they can and cannot employ.

But firms do need to do more to identify and break down the barriers that prevent individuals from non-traditional backgrounds from entering and progressing within their firms.

If a pattern emerges of much lower responses rates in some firms than others, then firms and regulators will need to ask why that might be.

But attitudes will change over time – what we are aiming for is a culture that embraces diversity, where individuals are comfortable providing this data.

Action plans

The requirements are currently being drawn up by the approved regulators for each part of the legal profession.

We are already providing commentary on the first 'action plans' from the regulators and my Board will discuss these soon. For now, a few general observations:

On the whole, regulators have embraced the data collection part of the exercise.

There is a consensus that we need better and timelier data in order to identify issues and target action accordingly.

That is a good start but data collection is not the sole objective of the guidance.

Also, diversity is not just about initiatives.

Gathering an evidence base and using it to evaluate existing diversity initiatives is only one of two objectives.

I refer you back to the second. *“To promote transparency about workforce diversity at entity level as an incentive on owners/managers to take action both in terms of ‘peer pressure’ and better information for both consumers and potential employees.”*

We recognise that regulators cannot enforce top-down diversity but that the market has a role to play.

Hence the importance of firm based publication. This is a simple but potentially powerful intervention.

Issues such as data protection should, of course, be addressed - but it is not the job of a regulator to impose a blanket approach.

Part of pushing responsibility on to firms is about asking them to consider these issues in their particular set of circumstances.

We are not micro-managing and we don't expect the regulators to micro-manage either.

Moreover, lack of compliance will in itself tell a story.

If firms and chambers publish limited data with significant numbers of 'prefer not to say', it might reveal something about the culture of their organisation.

If the number in each category is so low that it can't be published, again this might tell us something.

Next steps

Access and retention are only the first steps.

There is likely to be much more we need to do further up the career scale.

Transparency on the diversity of the workforce will enable us to measure improvements at progression towards the higher end.

Earlier this month we saw encouraging figures emerge concerning the number of women sitting on Boards.

The government is now predicting that its own target of 25% female board members of FTSE 100 companies by 2015 is on course to be met.

This is backed by figures from Cranfield School of Management which show that the proportion rose from 12.5% in 2010 to 15.6% at the start of this month.

These figures suggest that a significant shift is underway in Britain's boardrooms - it is high time that we saw a step change not just in women but also BME board members.

Nonetheless, there are signs that a consensus on the importance of this issue is delivering movement.

And, importantly, this is all taking place without mandatory quotas. But a step-change can only happen if firms retain and promote diverse talent.

Lawyers are an important part of the talent pool both for executive and non-executive Board members, particularly in view of the importance to organisations of the General Counsel role.

Only by extending the gains made at entry level up the scale can we ensure diversity at Board level.

From there we will see a virtuous circle.

A more diverse picture at the top will help transform corporate cultures for good – family-friendly hours, accessible internships, a culture that prizes diversity rather than lip-service – these will all become the new orthodoxy.

Moreover, as more talented individuals break through, just by being there they will send an unmistakable message that there's no longer a glass ceiling.

We will be doing all we can to create that 'head of steam' behind retention and progression.

As part of this, we will set out in our new strategic and business plan a new piece of work looking at pay.

There is still a substantial gender pay gap.

The Board is concerned at evidence that suggests that the gap may be worse in this sector than in the wider labour market.

The Law Society salary survey in 2008 found that the median gender pay gap in yearly earnings was 28.9%.

This compares to a national gender pay gap of 17.1%.

If this is still the case, then it surely must change.

To inform our work, we will be gathering evidence on the extent of that gender pay gap, and the causes for it.

By the end of the 2012/13 business year we will have evidence and, from there, can determine whether we need further action.

Conclusions

The scale of work to make the legal workforce in England and Wales more diverse is imposing indeed.

While there has been progress at entry level over recent years, diversity and social mobility tails off as we look further up the profession.

Retention and progression figures speak for themselves. There are systemic problems that require system-wide solutions.

That's why there needs to be a serious systemic effort to improve the picture on diversity and social mobility.

This is not an optional 'Corporate Social Responsibility'-style add-on. It's not about worthy, but ultimately limited, pilots and projects.

It emerges from a statutory duty on the LSB and the approved regulators to improve the diversity of the profession – and that is how we are treating it.

We will be working with the joint review, led by the approved regulators, to ensure that diversity is a thread that runs right the way through their proposals for education and training reform.

Justice and public confidence depend on an accessible legal profession which reflects communities.