

Legal Services Board

Encouraging a diverse profession

Consultation on revised guidance for regulators on encouraging a diverse profession

A response by
CILEx Regulation Limited

30 November 2016

Introduction

1. This response represents the views of CILEx Regulation Ltd, the regulatory body for Chartered Legal Executives (Fellows), CILEx Practitioners, CILEx Authorised Entities and individuals in other grades of CILEx membership.
2. Chartered Legal Executives, Associate Prosecutor members of CILEx, and CILEx Practitioners are authorised persons under the Legal Services Act 2007.
3. CILEx Regulation recognises the value of a diverse legal profession. The CILEx route to legal qualification enables individuals from non-traditional and diverse backgrounds, which are under-represented in the legal profession, to enter a legal career without a degree. The CILEx route allows individuals to progress a legal career and acquire degree level qualifications, whilst in employment.
4. CILEx Regulation has developed Practice Rights which members of our regulated community, and other sections of the legal profession, can acquire. Practice Rights enable individuals to perform legal work in their own right, without supervision; and consequently to further progress their legal careers.
5. We also regulate entities and can authorise members of CILEx with Practice Rights to provide legal services through entities accordingly opening up further opportunities to our diverse regulated community. We are currently looking to extend opportunities by developing ABS licensing.

Consultation questions

- 1) Is the proposal to switch the focus of the guidance to outcomes beneficial to encouraging the diversity of the profession?**
 6. The 2011 guidance, with its focus on collecting data, established the collection of diversity data within the legal profession; and created a bank of evidence to be built on. The data collection also raised awareness for firms that diversity is a subject which should be considered. However, the 2011 guidance concentrated on data collection and not the wider issue of encouraging a diverse profession. We recognise that to achieve a diverse profession, there needs to be a change in the emphasis of the guidance. The outcomes focused approach in the proposed guidance will enable the regulators to direct their work and resources towards developing actions and initiatives with the aim of delivering the outcomes. This has been our philosophy for a number of years.
- 2) Will the proposed guidance allow regulators the opportunity to develop their own approaches to addressing diversity issues in the legal services profession?**
 7. In our view the new outcomes focused guidance will better provide regulators with the opportunity to develop their own approaches to addressing diversity issues. Whilst there are issues common to all of the legal profession, each regulated community has different diversity issues.

8. CILEx Regulation mainly regulates individuals and the impact of our work is different to that of the regulators who predominantly regulate firms. Additionally, the impact of diversity work by other regulators and stakeholders can impact on our regulated community.
9. We have not been able to manipulate the data we receive from the Solicitors Regulation Authority (SRA), to which we refer in response to question 3, in the same way as the data captured in our survey. Additionally, the SRA has quite rightly collected data by adhering to the role categories of the 2011 guidance. This has resulted in data for regulated members in grades other than Chartered Legal Executives being captured along with other individuals such as trainee solicitors. As a consequence the high level data about this section of our regulated community has not been available to us. We will explore if different approaches either through working with other regulators or with CILEx can provide us with better information.

3) To what extent are regulators already demonstrating achievement of the outcomes? If they are not, why do you think is this?

10. As the 2011 guidance required data collection at entity level, and at that time we did not regulate entities, we made the decision to survey all self-employed and locum members and their employees as these most closely fitted with the LSB's guidance requirement to collect data at entity level. In this way, our regulated members working in firms regulated by other regulators have not been required to take the survey twice and the double accounting of their data has been avoided.
11. We have worked to increase our survey response rates by moving the survey online and by promoting the survey through emails, CILEx Journal articles and newsletters. We have analysed the data, looked at trends and published this information in a report on our website. We have actively sought to raise awareness of diversity generally through newsletters and CILEx Journals articles.
12. We have also liaised with the SRA, which regulates the majority of the firms in which our regulated community are employed, and they have provided us with the diversity data relating to sections of our regulated community which they collected through their diversity survey.
13. All regulators have worked hard to normalise the provision of diversity data in a sector where this has not been required historically. Barriers have been overcome, to increase the provision of data by individuals in the legal sector, including increasingly more meaningful data.
14. We are mindful of diversity in all aspects of our regulation. We are developing practices in our investigation activities to minimise any unconscious or direct bias. We are also developing annual analysis and monitoring of complaints and decisions in terms of diversity to identify any trends which in turn may require work to support sections of our regulated community.

4) How can the LSB ensure that the data the regulators collect continues to be comparable?

15. We are aware that there is a tension between providing guidance which enables individual regulators to develop their own approaches and the retention of the core element of the 2011 guidance, which is the model questionnaire. It is proposed that the model questionnaire is not included in the new guidance. With the legal sector developing in relation to both individuals and entities which are able to deliver legal services, we recognise that the flexibility of the proposed guidance will allow the data gathered to evolve to accommodate these changes. However, all the legal regulators have put resources into developing, implementing and operating their current data collections and accrued five years of data. If regulators develop the data they collect in different ways, future comparison may be difficult. Accordingly it may be helpful to include in the new guidance the importance of retaining the comparability of data when making future developments.

16. The new guidance refers to the diversity of the legal profession rather than the diversity of the legal workforce in the 2011 guidance. We query whether there is an intentional change in focus. We can see there are benefits and drawbacks to the focus being wider than just the profession. From our regulated community's perspective, given that a proportion start their careers in the "workforce" rather than the profession it would be beneficial to retain a wider focus.

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?

17. We are currently developing an action plan so we can monitor our work. Some areas we are considering are:

- a) monitoring and reviewing whether the diversity survey should be extended to other sections of our regulated community;
- b) working with CILEx to:
 - better understand and develop the diversity data collected across all of our regulated community;
 - understand diversity across the different grades of CILEx membership and identify areas for improvement;
 - continue to raise the profile of diversity within our regulated community through for example the inclusion of diversity on branch meeting agendas;
 - identify if there are issues for distinct diverse groups within our regulated community and encourage information exchanges through for example specific reference groups;
- c) continuing to monitor diversity issues within CRL's processes and decision making to identify issues and consider if action can be taken to address issues identified;

d) working with the other legal regulators through the Regulators' Forum or a separate group to regularly exchange information, ideas, good practice and explore the possibility of joint initiatives/collaboration if appropriate.

18. The proposed timescales in the consultation appear workable although we are mindful of the additional work streams which may result with work arising from other initiatives, including the CMA report; such work may impact on our current view of how long it will take to implement initiatives.

6) Will the proposed guidance:

a. deliver better services for consumers?

19. There is benefit from a more diverse legal profession because this ensures that talent is retained and attracted to the legal profession. Additionally, talented individuals from all diverse backgrounds will view legal work as a career in which they will be accepted and able to progress to fulfil their abilities and ambitions. It is reasonable to assume that this will translate into better legal services for consumers.

20. A more diverse legal work force will provide choice of provider for consumers who feel more able to engage with someone with a similar background.

b. support innovation in legal services?

21. Individuals from a range of diverse backgrounds will be aware of issues for their diverse groups and this can lead to the development of legal services to meet those needs.

c. allow regulators to encourage business-led diversity initiatives?

22. As we predominantly regulate individuals rather than entities we have not focused our planned actions at businesses. As our entity regulation grows we will look to encourage this.

d. encourage a more diverse profession?

23. The outcomes approach taken in the new guidance will enable the regulators to refocus their work. However, there will need to be supportive work and initiatives from all stakeholders, and society as a whole, to encourage a more diverse legal profession.