

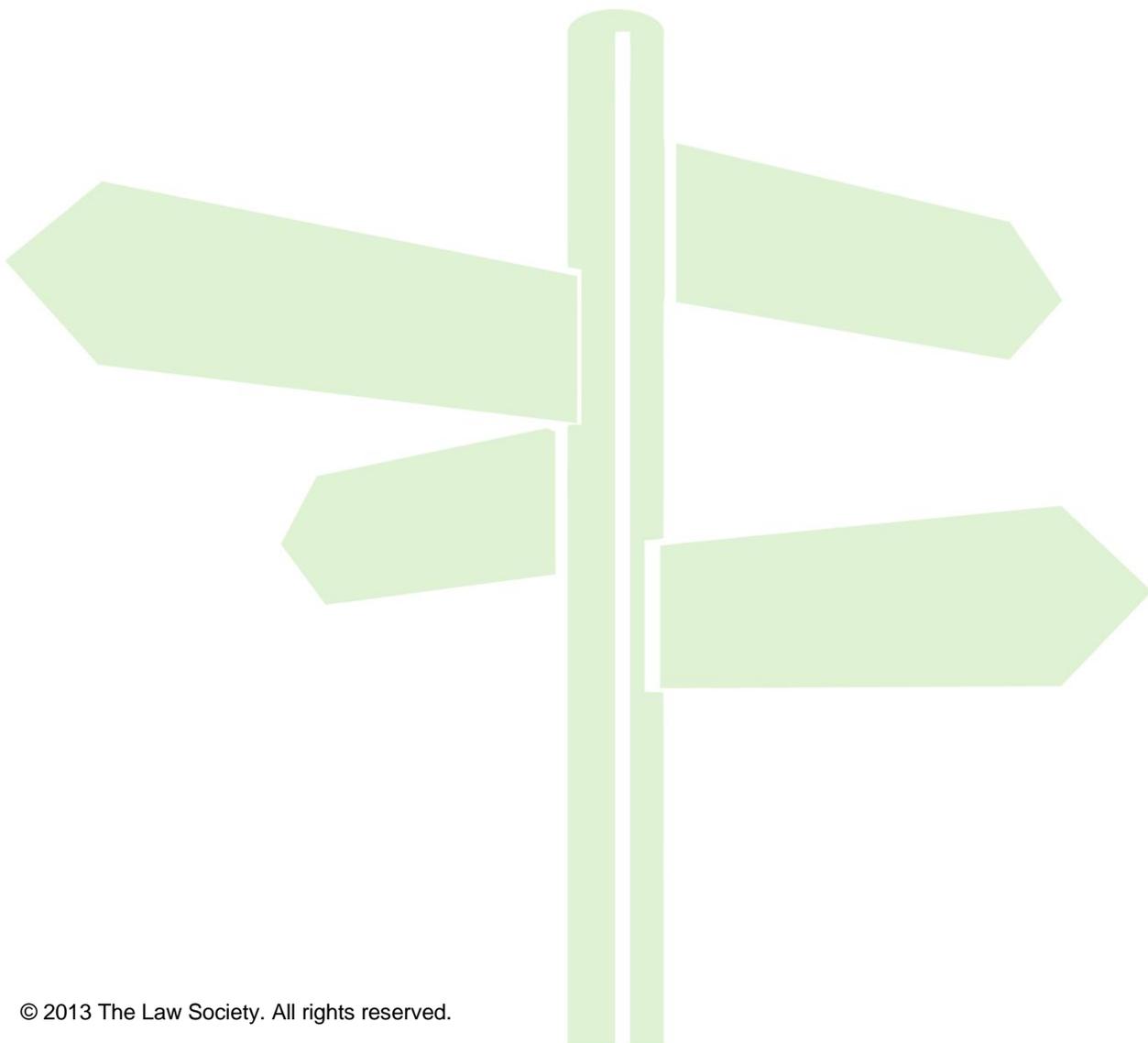


The Law Society

LSB consultation: Encouraging a diverse profession

Junior Lawyers Division response

December 2016



Encouraging a diverse profession

Consultation on revised guidance for regulators on encouraging a diverse profession

Response of the Junior Lawyers Division of the Law Society

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- 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?

1. Introduction: About the Junior Lawyers Division

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales. The division, which has a committee with an independent voice, was established in 2008 to support:

- Legal Practice Course students
- Legal Practice Course graduates
- Trainee solicitors
- Solicitor up to five years' qualified

The JLD, is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group.

The JLD provides members with an opportunity to:

- Network and connect with other junior lawyers
- Discuss issues of concern
- Benefit from training, advice and career guidance
- Ensure their views are heard
- Contribute to JLD campaigns, lobbying activities and consultation responses

For further information about the JLD visit the JLD website – www.lawsociety.org.uk/juniorlawyers

2. Summary of JLD response

The Junior Lawyers Division supports the Legal Service Board's objective to encourage a diverse legal profession.

On the subject of diversity we are particularly concerned about access to the profession, this being one of our key policy areas. The JLD believes that access to the profession should be based on merit, and not on any other factor.

The JLD campaigns for equality of access to ensure that those capable of qualification are able to compete. The JLDs commitment to this end is pervasive in many of our policies.

We agree with the Legal Service Board (LSB) that a diverse legal profession will better lend itself to innovation, and better meet consumers' legal needs and limit wasted talent.

We broadly support the LSB's view that 'simply collecting data is not enough' and we welcome the renewed focus on outcomes to 'encourage regulators to take their work beyond data collection'.

However we do have some concerns that the proposed guidance may favour flexibility for the regulator at the expense of ensuring that quality comparable data is obtained.

In respect of the regulator most relevant to our members, the SRA, whilst we acknowledge the positive steps that have been made in collecting and analysing data, we would stress that there is much progress to be made to integrate the importance placed on diversity into the SRA's core work.

3. Response to Consultation Question 1

Is the proposal to switch the focus of the guidance to outcomes beneficial to encouraging the diversity of the profession?

We believe so. We welcome the proposal to switch the focus of the guidance to outcomes, with the purpose of requiring regulators to go beyond data collection and publication.

4. Response to Consultation Question 2:

Will the proposed guidance allow regulators the opportunity to develop their own approaches to addressing diversity issues in the legal services profession?

The proposed guidance does allow flexibility for regulators to develop their own approach. However we query the need for flexibility around the collection and publication of diversity data. Although we note that the LSB expects regulators to work together and agree a common methodology, we are of the position that the guidance may allow too much flexibility in this area.

The proposed guidance states that evidence of progress/achievement of outcome one could include data collection, analysis and publication. We believe this should be included as a mandatory minimum requirement to avoid the guidance allowing regulators' policy on diversity to become regressive.

The diversity data collected by regulators is key to measuring the success of diversity policies in addition to the diversity of the profession more generally. We are of the position that the collection and publication of this data should be mandatory. In addition we feel that the LSB should require regulators to do so on an annual basis.

To aid comparability of data between and across regulators we are of the view that the LSB should maintain a template questionnaire setting out questions that regulators must use as a minimum. Regulators should then be given flexibility to expand on that questionnaire.

As a minimum the LSB should enforce a mandatory requirement that regulators obtain data on the characteristics as per LSB's 'scope of diversity' set out in page one of the consultation documents. Those characteristics are age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities.

5. Response to Consultation Question 3:

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

For the purposes of our response we will focus on the work of the SRA given that this is the regulator most relevant to our members.

The SRA has included in the Principles that solicitors must 'run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity'. We welcome this commitment to diversity from the SRA

Collection of diversity data is also one of the mandatory outcomes in chapter 2 of the SRA Handbook, which requires firms "to have appropriate arrangements in place to ensure that you monitor, report and where appropriate, publish workforce diversity data".

The SRA recognises that the lack of a diverse legal profession is one of the priority risks and recognises the importance of collecting and monitoring diversity data.

The SRA has developed a diversity tool to help firms compare their own diversity with each other.

The SRA has successfully collected data which it has published. The data is easily accessible and has been analysed by the SRA. The analysis is also accessible.

A key area of concern, as expressed above, is the extent to which the SRA recognises and incorporates the importance of diversity within its core work. We refer specifically to the SRA's proposal to change the method of qualification as a solicitor in England and Wales.

We have expressed serious concerns to the SRA about its proposals in this regard, due to the obstacles their proposals could create for those seeking to enter the profession. We have stressed that money can be a significant obstacle to qualifying as a solicitor. The costs of university and the additional LPC expenditure already deter many suitable and capable candidates from entering the profession simply because they are unable to incur the financial risk. We understand that the SRA point to the proposed non-mandatory status of the LPC as reducing the overall cost of qualification. We do not necessarily agree that the market will adapt in the manner envisaged by the SRA. A more immediate concern however is that the proposed Solicitors Qualification Exam is not a course, and as such would not qualify for a professional studies loan. Therefore, although the overall cost may be reduced, more candidates may be prevented from accessing the profession as they cannot obtain the means to take the exam and any optional preparatory course. As they are yet to address our concerns on this issue, we remain concerned that the SRA's proposals to reform the method of qualification does not recognise the severity of this problem.

We are of the view that ensuring an accessible profession is fundamental to achieving diversity within the profession. It is therefore vital that efforts to

improve diversity must also include any work carried out by the regulator in respect of the qualification process.

6. Response to Consultation Question 4:

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

As above, to aid comparability of data between and across regulators we are of the position that the LSB should maintain a template questionnaire setting out questions that regulators must use as a minimum. Regulators should then be given flexibility to expand on that questionnaire.

7. Response to Consultation Question 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?

We are of the position that the most effective way to measure regulator performance against the outcomes is to require regulators to provide evidence of how it has met the evidential requirements for each outcome.

For example outcome 1 requires that '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'. The guidance states that:

"Evidence of progress/ achievement could include:

- *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"*

We suggest that the LSB should require evidence of all steps that a regulator has made towards each of these points in order to measure performance against the outcomes. This would also assist the LSB to compare the steps being taken by different regulators.

We suggest that 12 months is a sufficient length of time to allow regulators to implement changes before any potential future performance assessment.

We would support a mandatory reporting requirement whereby regulators must submit their data every 12 months.

8. Response to Consultation Question 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?

We support the move towards an outcomes focused approach towards diversity. Subject to the concerns set out above, it is our view that the proposed guidance can offer an opportunity to achieve these aims. However, it is vital that flexibility is not given to regulators at the risk of regressing on progress that has been made towards diversity, such as the collection of diversity data. We are therefore of the position that minimum mandatory requirements should be maintained, such as the collection, publication and analysis of diversity data on an annual basis.

**Junior Lawyers Division
December 2016**